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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
PURSUANT TO ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1993

Addendum

MADAGASCAR

[20 July 1993]

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* Available in the files of the Centre for Human Rights.

Introduction

1. The Convention on the Rights of the Child was ratified on 19 December 1990. Immediately after that ratification, the activities of the legislative and executive branches were practically suspended and the country entered a transition period. The Government had to deal with urgent tasks, such as the establishment of new institutions, the adoption by referendum of a new constitution, the election of a new President of the Republic and preparations for elections to the National Legislative Assembly.

2. Consequently, the present report, which has actually been submitted within two years of the entry into force of the Convention, contains only a few new legislative elements and has also suffered as a result of the shortage or lack of statistical and other data caused by the problems inherent in a period of political and social transition.

3. June is traditionally a month for seminars, information lectures and media activities in favour of the protection of the rights of the child and his social status. Many illustrated handbooks in the Malagasy language have been published by international organizations, particularly with UNICEF's assistance, and by non-governmental organizations (NGOs).

4. It must nevertheless be noted that the interests of the child are less rewarding for the mass media and information and publishing agencies than are the general problems of human rights and of the status of women. It is to be hoped that a campaign to popularize the Convention on the Rights of the Child will have more of an impact, not only on the population itself, but also on NGO officials and the authorities.

I. GENERAL PRINCIPLES

5. The Convention on the Rights of the Child was ratified on 19 December 1990. Because of the transition situation in 1991 and 1992, lawmaking activity and the establishment of new institutions for the protection of children were difficult, if not impossible. None the less, an initial report drafted in such conditions must at least describe the legislation in force, the factors which have hampered its implementation and may be assumed to be unchanged and the difficulties encountered by the authorities and competent bodies in the recent past. It is in this spirit that we will discuss the general principles which constitute a logical introduction to the considerations that follow, particularly those relating to civil rights and freedoms.

6. Four concepts embodied in the Convention are regarded as general principles which apply to the report as a whole or to which the Convention attaches particular importance.

A. Non-discrimination

7. Article 2 of the Convention states that non-discrimination applies to all of the rights set forth in the provisions of the Convention. Non-discrimination applies to race, colour, sex, language and religion. The Convention also establishes the criteria of the political or other opinion of

the child and his natural protectors (parents or guardians), national, ethnic or social origin, property, disability and birth or other status. It goes even further and invites States to take effective measures to protect the child against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents or family members.

8. Non-discrimination is usually based on a lengthy tradition of openness and contacts with the outside world, as reflected by the history and traditional civilization of Madagascar. The term "fihavanana", meaning the parentalization of human relations and containing the term "havana", meaning both "parent" in the narrow sense and "friend" or "relation" in the sense of a parent, is one of the foundations of human relations in traditional Malagasy civilization. Despite its misuse outside the context of social relations, the concept is still a "pillar of wisdom" and, taken in its noblest sense, it rules out any idea of discrimination. This explanation should be discussed in the light of social changes and the socio-cultural and economic situation at the present time, but it does make it possible to affirm that the spirit of discrimination is absent from traditional Malagasy civilization.

9. In addition to this main general idea, account must be taken of the situation in positive law. The basic statute is the new Constitution of 18 September 1992, whose provisions will be referred to throughout this report.

10. A preamble to a constitution is an integral part of Malagasy positive law and is binding on the courts (Ordinance No. 62041 of 19 September 1962, art. B). The preamble to the Constitution of 18 September 1992 provides that an essential condition for the development and growth of the human being (implicitly including the child) is "action to combat injustice, inequalities and discrimination in all its forms". The preamble to the Constitution also regards the International Bill of Human Rights, the African Charter of Human and Peoples' Rights and the Convention on the Rights of the Child as part of Malagasy positive law. It is thus evident that all provisions making non-discrimination applicable both to adults and to children are part of Malagasy legislation. This is, for example, the case with article 2 of the Universal Declaration of Human Rights.

11. Other international texts are also part of Malagasy positive law because Madagascar has acceded to and ratified them. This is true of the International Covenant on Civil and Political Rights, whose provisions apply both to adults and to minors (arts. 2 and 26). Article 24 of the Covenant provides that "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor".

12. Article 8 of the Malagasy Constitution provides that the State shall "prohibit any discrimination based on sex, level of education, property, origin, race, religious belief or opinion".

13. Other legislation enacted before the Constitution gives effect to the principle of non-discrimination, including article 115 of the Penal Code,

which stipulates punishment for any person in authority who knowingly denies anyone a right by basing his decision on origin, colour, sex, family situation and actual or alleged membership or non-membership of an ethnic group, nation, race or particular religion.

14. There can thus be no doubt that non-discrimination is a general principle of the law of the protection of children in Madagascar. Between law and fact, however, lies an area of loopholes, confusion and practice based on social life.

15. Some traditions, particularly in rural areas, are still very strong and will disappear completely only if coordinated information and civic and moral education activities are carried out. There are still traditional "rejections", a customary means of exclusion that has particularly adverse effects. The village community, the fokonolona, the family group or simply the parents may reject a child because of the conditions in which his birth took place (born a twin, born on an unlucky day, born with certain deformities that are regarded as a threat to the social group, born in abnormal conditions, etc.). The lawmakers have tried to combat such rejections by prohibiting the rejection of minors (Act of 20 November 1963, arts. 79 et seq.). It is not obvious, however, that this prohibition has had tangible results. Rejection of children has definitely been on the decline, but basically as a result of the dedicated work of NGOs, religious missions and welfare organizations which contact families and take in children in danger of rejection.

16. Discrimination based on sex is still strong, but is being eliminated as a result of the efforts made in the past few years by women's associations and the competent Government authorities. Boys are regarded as the guarantors of the family's future, the future guardians of the property of the family line and the preferred depositaries of teachings based on custom and tradition. Girls will sooner or later leave the family and help to create or enrich another line. As a result, there are differences in the consideration given to children, in education and in the place of children within the family.

17. Discrimination against children may be based on their racial origin or religion, not for reasons that are traditional or inherent in Malagasy civilization, but for economic reasons. The public often tends to object to the fact that a large share of economic activities which create wealth are in the hands of foreign minorities, usually of Asian, Arab or Indo-Pakistani origin.

18. This problem does not have to be discussed here, but it does have to be decided whether defensive reactions in Malagasy society may not have discriminatory repercussions on children who are not responsible either for their origin or prosperity. Although some children become fully integrated in Malagasy society despite their foreign origin, other categories suffer from various forms of hostility, distrust and indifference that may turn into discrimination.

19. The situation of social and political unrest, which is only temporary and will actually lead in the long run to more freedom of expression, freedom of opinion and freedom of belief, may create conflict or crisis within families.

Children who have not yet reached the age of discernment and have been raised in a tradition of resigned obedience may suffer as a result of such situations, not only within the family group, if it is divided, but also as a result of conflicts in adult circles which may create confusion in the unprepared minds of children and pave the way for latent forms of discrimination based on the opinions or beliefs of the persons naturally responsible for protecting the children.

20. These situations actually exist and create problems which are nevertheless not insurmountable: reasonably designed civic and moral education, more effective assistance for parents as to guidance and responsible counselling of children, and a better grasp of the rights of children through proper communication, would go a long way towards promoting genuine non-discrimination.

B. Best interests of the child

21. The concept of the interests of the child is already well known in Malagasy law, but it should be noted that article 3 of the Convention stresses the "best" interests of the child. Articles 21 and 23 of the Constitution also emphasize the importance of the protection of the child.

22. Article 1 of the Ordinance of 19 September 1962, on the protection of children, provides that "the child shall have a privileged place within the family".

23. The foregoing considerations about the importance Malagasy lawmakers attach to international conventions containing specific provisions in favour of children (non-discrimination) are fully applicable in the matter of the interests of the child.

24. In Malagasy law, the child's best interests are given pride of place in legal protection for the child, in the administration of the care necessary for his well-being and in Government monitoring of welfare agencies and establishments. The basic problem seems to be to identify the interests at stake: the best interests of the child are crucial, but do they compete with other interests and how can the conflict of interests be settled to the advantage of the child?

25. The best interests of the child may compete with:

(a) The interests of the family, which regards the child as an asset and a blessing, but also as a helping hand in times of poverty and economic crisis affecting the family as a whole. The child may be a source of manpower, an unpaid servant, but is always surrounded by affection;

(b) The interests of the parents (the couple). The problem of poverty is more serious in some sectors than in others. Schooling is expensive. A child is a burden who must be dressed, fed and raised. In return, he is expected to do work which may be contrary to his best interests. Obviously these comments relate to the most underprivileged social groups;

(c) The interests of the other children within the same social or family group and even within the nuclear family. There may be differences between younger and weaker children and older children who are in better health. Several subgroups can be differentiated within a group of children from 1 to 18 years of age. It is then necessary to determine the best interests of each child in relation to others living under the same conditions. Inequalities may thus be established. The problem may become dramatic if the family itself is merely surviving and unknowingly sacrifices the weaker children or shows less concern for physical protection of the children who are at a disadvantage as far as their health and mental security are concerned;

(d) The interests of public order. The State must guarantee equal protection for society and the individual. If it is in the interest of society, which is concerned about physical security and protection of property, to exclude and isolate children aged under 18 whose behaviour poses a threat, it may be asked where the children's best interests lie.

26. Conflicts of interest exist, but must be settled in the context of full implementation of the Convention. Conflicts might end or grow less serious if social welfare facilities were more effective, if information for parents was better thought out and more readily available and if children themselves, depending on age group, were more aware of their rights and could practise the system of protecting one another.

C. Right to life, survival and development

27. Malagasy positive law recognizes that every human being has the inherent right to life. This right is recognized in article 6 of the International Covenant on Civil and Political Rights and article 3 of the Universal Declaration of Human Rights. Article 19 of the Malagasy Constitution recognizes the right of every person to protection of his health as from the moment of conception, whereas article 21 makes it a duty of the State to guarantee protection of mothers and children through appropriate legislation and social institutions.

28. Like other general principles, the right to life is an integral part of Malagasy tradition and civilization and the inviolability of the human person and his protection against bodily harm are guaranteed by several provisions of the Penal Code. In particular, articles 351 et seq. of the Penal Code lay down penalties for exposure, abandonment and neglect of a child such as to have caused death; these acts of violence are punishable in the same way as murder.

29. However, the right to life is not protected by criminal law alone. The Malagasy authorities are aware that the right to life, survival and development is a matter of particular concern in that protection of children is not only the effect of the law, but more especially the result of various preventive measures, action to combat malnutrition, mother and child care programmes and family planning programmes. Such protection includes additional measures to help the poorest families deal with the various causes of infant mortality. These measures include information activities, the distribution of basic medicines for primary health care and medical research

on the use of local resources such as medicinal plants and traditional methods which have been successful in eliminating ailments such as diarrhoeal illnesses and vitamin deficiencies.

30. The various ways of protecting health and well-being will be considered when the report goes into greater detail on medical problems. At this point, however, attention must be drawn to problems relating to the concept of survival and development. In developing countries hard hit by a serious economic crisis, the authorities are tempted to give priority to economic development measures at the expense of prevention and social welfare measures. When a structural adjustment programme proves necessary, it is known that it will involve sacrifices on the part of an already poverty-stricken population, as well as reductions in social, prevention and even health expenditures. Additional measures compensate for the effects of this situation, but it is by no means certain they will reach the people who stand most in need of means of survival.

31. The best interests of the child may then be sacrificed. This situation could be remedied by mobilizing private initiatives to take over from the welfare State. This type of mobilization should also operate at the community level, since prevention through hygiene, vaccination, nutritional recovery and the use of local and natural resources are tools for guaranteeing the survival of the most endangered children and avoiding what a UNICEF report called the "silent disaster".

D. Respect for the views of the child

32. Article 12 of the Convention must be interpreted from two points of view. The first is respect for the views of the child, since free expression of an opinion on a matter of concern to him is a right. This provision is now part of Malagasy positive law and thus puts a new light on the child's personality. In the spirit of tradition, the child cannot express his opinions, but must rely on the wisdom of his natural protectors, namely, his family, his mother and father and his legal guardians.

33. Admittedly, article 12 applies mainly to a child who has reached a certain degree of maturity, but this restriction, which is quite natural, in no way detracts from the innovation introduced by this article. Free of weighty ancestral concerns and capable of resisting any ideology that may distort his judgement, the child is given a new right whose guiding principles of education and instruction must be taken into account.

34. Article 12 of the Convention is also intended to enable a child involved in judicial or administrative proceedings to express his opinion in order to ensure his defence or protect his personality. Such a child must be capable of due discernment. In Malagasy criminal law, this term is not new. In colonial legislation, former articles 66 to 69 of the Penal Code and the Decree of 13 November 1928 provided that any minor who committed an offence could not be sentenced if he was considered to have acted "without due discernment". In the Ordinance of 19 September 1962, the term "without due discernment" was replaced by the term "criminally irresponsible".

II. BASIC HEALTH AND WELFARE

35. In the discussion of general principles, reference has already been made to the essential requirement of survival and development. Article 6 of the Convention recognizes that "every child has the inherent right to life" and goes on to state that his survival and development must be ensured to the maximum extent possible. The Convention refers essentially to the responsibility of States parties. This means that particular importance must be attached to the problems of social and medical infrastructures, general policy regarding health and the establishment of machinery to monitor the operation of the health system as a whole.

A. Survival and development

36. Child survival and development has been a primary concern of the health system over the past 10 years. In view of the distribution of the population, the health system in Madagascar has always relied on a wide range of basic establishments which vary in size and number as well as quality, depending on the density of the population and the vulnerability of the regions. This system has been maintained and developed to the extent that budgetary resources have allowed. Aside from the hospitals in the chief towns of the faritany and smaller medical and surgical hospitals, in 1983 there were 1,950 basic health establishments comprising first-aid, childbirth and nursing facilities and primary health care centres. Additional coverage is provided by non-governmental organizations engaged in health care activities and by the free clinics in urban centres.

37. According to the most recent statistics available, there are now 1,970 basic establishments, including 1,035 primary health care centres, as well as 348 NGO facilities and 935 free clinics, with the private sector accounting for approximately 13 per cent of health care activities in Madagascar. Efforts have been made to expand and strengthen the basic institutions and, in particular with international assistance, the facilities of urban hospital centres have gradually been improved. However, the question is whether this formal extension of health care coverage really meets the essential needs of survival and development. In 1984, it was estimated that more than 40 per cent of the rural population did not in fact have access to health care meeting the requirements for survival. Yet the rural population, which is estimated at 76 to 80 per cent of the total population, is the most vulnerable because it is scattered and far from the basic establishments.

38. Furthermore, there has been a decline in real terms in annual public spending on medicines per head of population. Nevertheless, efforts have been made to reduce the number of imported medicines and to conduct research into local remedies (healthy food, medicinal plants, preventive measures).

39. Efforts have also been stepped up to train doctors more quickly and provide paramedical staff for rural health care establishments. However, the current situation does not indicate that the conditions for survival have been fully achieved and Madagascar is not as yet able to take the necessary steps to adapt the health system to the context of an economic crisis which is creating poverty, vulnerability to diseases that were thought to have been eradicated and a feeling of resignation in the remotest and most seriously

affected regions. It should be recalled that the minimum conditions are the effectiveness of health coverage, limitation of costs and continuity in efforts to provide material and financial assistance.

40. A peasant wishing to go to a basic health care facility is handicapped first of all by the distance he has to travel under difficult conditions. He has every chance of finding well-trained paramedical staff who are reasonably well motivated but lacking in equipment and medicines. The intermediate facility nearest to the sick person might be several dozen kilometres away. The conditions of travel and lack of transport are well-known problems.

41. Someone living in a poor suburban area has more chance of finding a basic unit or hospital centre in his neighbourhood. However, he is in a much more vulnerable and weak position and constantly runs the risk of encountering staff who do not work free of charge - and this applies at all levels of the hierarchy. Many people prefer to go without treatment because of the expense of medicines, the cost of hospitalization and "charges" not provided for in any regulations

42. The situation of families which can afford to be treated in private hospitals has not been taken into consideration here, but it is worth noting the increase, at least in large urban areas, in the number of private health centres using the services of specialists, and of generalists working quite independently or sharing their time between hospitals and their private activities, as well as the establishment of private clinics with good staff and equipment but very obviously intended for the more well-off classes.

43. This situation is temporary and connected in particular with the lack of preventive hygiene measures. The public authorities are aware of the problem and constantly endeavour to take supplementary measures related to health or welfare. However, the real fate of children in such situations is inevitably a matter of concern. The statistics themselves are not always revealing since the infant and child mortality rate, particularly for small children, may well be higher than is thought in the most disadvantaged families.

B. Disabled children

44. Article 23 of the Convention recognizes that mentally or physically disabled children have the right to enjoy a full and decent life, in conditions promoting self-reliance and facilitating active participation in the community.

45. It must be recognized that disabled children, although entitled to special protection on account of their vulnerability, do not appear to have been a major concern in society. One explanation may be that abnormal children were traditionally marginalized. However, during the last 10 years, various protective measures and safeguards have been introduced, such as white sticks for the blind, and this measure has been included in the Highway Code.

46. Other measures are being taken through joint initiatives by the authorities and international agencies or non-governmental organizations particularly concerned with the disabled. These include:

(a) The promotion of HANDISPORT, and sport for the disabled;

(b) The "Socio-occupational integration of disabled persons" project (Ministry of Labour and ILO);

(c) The "Socio-economic integration of disabled persons" project (Ministry of Population and ILO);

(d) The "Fight against vitamin A deficiency" project (Ministry for Scientific Research, Ministry of Health, UNICEF);

(e) The research programme on iodine deficiency disorders.

47. There are various centres run by the State or non-governmental organizations which cater for the disabled. A non-exhaustive list would include:

(a) The Antsirabe Physical Rehabilitation Centre;

(b) The Befelatanana Artificial Limb Centre;

(c) The Antsirabe Institute for the Blind (special education, blind people and social reintegration);

(d) The Institute for Deaf Mutes at Antsirabe and Antananarivo (special education and academic integration).

The Lutheran Centre and the "White Orchids" Centre in Antananarivo are among the non-governmental organizations catering for the disabled.

48. Since the term "disabled" can be interpreted more broadly, the list should also include the Anjanamasina Centre for the Mentally Disabled and the specialized hospital services which treat the physically disabled.

49. Awareness of the problems and the efforts made thus far are clearly insufficient. There is, furthermore, a need to identify disabled juveniles. This poses a major difficulty in that a disabled child is often treated as an object of shame and has to be kept from any contact with the outside and remain under the control of the family. Information and communication with families, the improvement of reception facilities and the involvement of a greater number of non-governmental organizations concerned essentially with the disabled are highly desirable.

C. Health and health services

50. Regarding the concept of child survival, the public authorities, with the effective assistance of international agencies, particularly UNICEF, have focused their efforts first of all on reducing infant and child mortality. In 1981, the infant mortality rate was estimated at more than 90 per thousand, with 45 per cent of all deaths occurring among children under 5 years of age and 23 per cent among children under 15 years of age.

51. The main causes of this high mortality rate are well known. The first is infectious children's diseases. Research in 1988 revealed that, in comparison with the benchmark year 1975, considerable changes occurred in 1987-1990 particularly as a result of the Expanded Programme of Immunization (EPI), under which most children under five years of age were immunized against diphtheria, tetanus, whooping cough, poliomyelitis, measles and tuberculosis. The mortality rate has declined markedly and the hospital morbidity rate has been reduced to zero.

52. Despite this encouraging situation, we should not lose sight of the fact that, for the years 1989-1990, the immunization rate was hardly more than 50 per cent, even though adequate doses of vaccine were available. This highlights the need to increase the number of immunization centres to cope with a scattered population pattern and also to communicate with the community and especially with families.

53. Another cause of infant mortality is diarrhoeal diseases. Here, paradoxically, the difficulties are greater. Despite the efforts of the health services, until 1989 diarrhoea was one of the main causes of sickness, including hospital deaths, and the proportion of medicines used for intestinal infections was particularly high.

54. More recently, progress has been made, sometimes with spectacular results, for two main reasons: first, the greater awareness of families reached by information campaigns concerning prevention and measures of hygiene; and, secondly, research based on local remedies involving the use of oral rehydration salts and rice water.

55. However, aside from these areas in which improvements may be expected with regard to child survival, there have been fresh outbreaks of other diseases, which are all the more surprising in that they seemed to have been eradicated. These include pernicious forms of malaria, skin diseases causing acute articular rheumatism and seasonal respiratory diseases, particularly in certain regions and among the population under five years of age.

56. The second goal of combined efforts by the public authorities, international agencies and national or foreign NGOs has been to combat malnutrition, as part of the primary health-care programme to which reference has already been made. Malnutrition is the cause and the effect of several diseases. Complications may prove fatal for the weakest children.

57. In this area, the many difficulties are sufficiently well known. First, there is malnutrition among small children, aggravated by weaning, frequent pregnancies, old-fashioned eating habits and taboos. A further difficulty is chronic malnutrition among juveniles from poor rural areas and the suburban areas to which some migrant families or social groups affected by the economic crisis have moved. There is also acute malnutrition resulting from drought and in regions where the population is forced to move on because of insecurity, theft of food (cattle, crops) or a deterioration in means of communication that is virtually isolating some communities.

58. Other reasons include insufficient nutritional education due to lack of communication and the considerable difficulties encountered in efforts to

change habits and traditions and diversify food crops, and the consumption of foods whose nutritional value is inadequate or low. Educators in family and child health must also be highly motivated.

59. Third, health care and education of the mother is now a primary concern. While the mother is the person closest to the child, all too often she is also the person most heavily burdened with the inherent responsibilities of family life in urban, and especially rural, areas.

60. In recent years, some programmes have been designed and partly implemented to provide better prenatal and post-natal care, to reduce maternal mortality and improve women's nutrition. Concerted efforts have increasingly been aimed at promoting family planning. In this area, too, there are no few difficulties.

61. While the health-care establishments, maternal and child protection centres and non-governmental organizations appear to provide acceptable coverage, there is a tendency not to attend or to mistrust them, which may be explained by the excessive number of responsibilities placed on women and the lack of family health information and education. The family planning programmes are hampered by traditional pro-natalist attitudes in Madagascar. Yet the number of abortions (still a criminal offence), often practised under conditions that seriously affect the woman's health, is surprising. In the last two years, however, women albeit in urban areas, appear to have shown a much greater interest in family planning.

D. Social security

62. Some segments of the population enjoy what might be termed formal national security. In the public sector, civil servants and their families and executives are entitled to reimbursement of 80 per cent of their medical expenses, and family allowances are also granted for children. In addition, there is a National Social Insurance Fund for workers in the private sector. However, this protection, while benefiting the child, obviously covers only minority categories of the population. No specific measures exist for temporary workers and peasants.

63. It might be contended that free medical care is a form of social security but, as we have seen, this free service is becoming more and more theoretical and payment, even for primary health care, is becoming the rule, whether formal or informal.

64. There are no State structures as such to look after children while their parents are at work. In the traditional Malagasy family structure, the various forms of family security and cohesion quite naturally afforded protection and care for children. This situation may well change as a result of local phenomena such as the breakup of the family group and the increasing self-reliance of couples, which tend to diminish family cohesion.

E. Standard of living

65. Well before the Convention, Malagasy positive law, particularly in the Ordinance of 19 September 1962 on child protection, assigned the family the

responsibility of providing for the child's harmonious development and upbringing and affirmed his right to the fullest possible material and moral security.

66. The problem of ensuring an adequate standard of living for the child's development has been mentioned several times in this report. It should, however, be borne in mind that, in the present situation, ties of assistance and protection must be established between the family, which bears the primary responsibility, the State, which is a backup mechanism, and the child, on whom the Convention confers rights, particularly the right to development and self-fulfilment under moral and material conditions implying a standard of living that corresponds to the means available to the State and the parents.

III. CIVIL RIGHTS AND FREEDOMS

67. Has the adoption of the Convention on the Rights of the Child had the effect of changing Malagasy laws, regulations and judicial practice in regard to the civil rights and freedoms of children?

68. In Act No. 90-029, of 19 December 1990, the Malagasy National Assembly authorized ratification of the Convention, something which was done under Decree No. 90-655, of the same date. After the Act was adopted, the activity of the National Assembly was suspended and the country entered the period of transition. The Government was taken up with more pressing tasks: the establishment of institutions for the transition, the maintenance of law and order, and a referendum on the adoption of a new constitution, which was submitted to the people on 19 August 1992. It was not, therefore, possible to determine whether provisions had to be adopted to bring the laws on children into line with the Convention or to enact further laws.

69. The new Constitution none the less affirms the principles of human rights and fundamental freedoms and holds the International Bill of Human Rights, the African Charter of Human and Peoples' Rights, as well as the Convention on the Rights of the Child, to be an integral part of Malagasy positive law.

A. Right of the child to an identity (art. 7) and preservation of identity (art. 8)

70. The four matters set out in articles 7 and 8 of the Convention - civil status, name, nationality, filiation - had formed the subject of some of the first legislation adopted shortly after Madagascar's accession to independence, on 26 June 1960. It bore the mark of efforts made to reconcile both Malagasy customs and the peremptory principles of modern law.

71. At the time, the Legislature was guided by the following principles:

(a) Providing modern laws for the Malagasy people, affording them the greatest possibilities of moving ahead without a sharp break with tradition;

(b) Unifying the law for all Malagasy citizens, since some were governed by traditional law and others by the French Civil Code.

We wish to draw attention to this in order to point out that the legislative texts in question have proved their value over the past 30 years and, even if not directly concerned with the protection of children, they do already respond to some of the basic issues raised by the Convention. The problem lies above all in implementation, for various reasons which will be explained under the appropriate headings.

1. Civil status

72. When it acceded to independence, Madagascar recognized the importance of the civil register not only as an institution for public order but above all as a way of enabling individuals to prove their identity and their legal situation, and hence to protect their personality and their rights. Act No. 61-025 of 9 October 1961 unified and streamlined the rules on civil registration and status, which had hitherto been complicated because civil registration in Madagascar had been governed by a number of scattered laws and regulations and nationals of Malagasy origin did not have the same personal status.

73. In articles 24 to 29, concerning birth certificates, Act No. 61-025 lays down the necessary requirements for registering a child's birth. The articles cover, among other things, the following essential items:

(a) The obligation to declare the birth within 12 days;

(b) Compulsory inclusion in the certificate of essential particulars to identify the child (day, time and place of birth, child's sex, surname and forenames, and the identity, occupation and place of residence of the parents and the person making the declaration);

(c) Registration formalities for foundlings;

(d) Possibility for the father of recognizing a child born outside of wedlock, at the time the birth is declared (maternal filiation, under Malagasy law, is apparent from the birth itself).

74. Article 81 of the Act stipulates that any birth on Malagasy territory must be declared to the registrar even in the case of a foreign or stateless child.

75. What are the provisions concerning preservation of identity? To begin with, irregularities are penalized:

(a) Failure, without valid reason, to make the compulsory declarations entails minor penalties (Penal Code, art. 473 (3));

(b) False statements or wilfully altering or destroying a civil register or certificate constitutes a criminal act;

(c) Negligence by registrars and depositaries of the registers in the course of their duties incurs personal responsibility towards private individuals if the latter are harmed as a result. It may, depending on the case, also entail criminal penalties or disciplinary measures.

76. Act No. 61-025, supplemented by Act No. 66017 of 5 July 1966 (arts. 68 et seq.) went on to introduce a simple, straightforward procedure whereby a judicial ruling can replace the absence of a birth or death certificate. The Legislature, in instituting this procedure, sought to make up for the lack of certificates as a result of special circumstances and not to allow a certificate to be made out in keeping with the wishes of unscrupulous persons. Fraud is subject to severe penalties. The judicial ruling procedure is different from the procedure for rectifying or reissuing a certificate, which is also provided for in law.

77. It should also be noted that neither a declaration of birth nor the first copy of the birth certificate is subject to any tax.

78. It is also important to point out that there is a family record book which also contains particulars of births and deaths, adoptions, and recognition and legitimization of children born out of wedlock.

79. The legislation on civil registration is sufficient. The problem lies with implementation, and there are a number of causes:

(a) The provisions are not always observed by those required to apply them. This shortcoming became all too apparent in 1977, when the administrative system was reorganized (Amended Ordinance No. 76-0044 of 27 December 1976). The duties of registrars were in fact assigned to elected officials who had not, particularly in rural areas, received suitable training to carry out their task properly. The advent of the Third Republic will definitely solve the problem;

(b) Inadequate facilities and problems of distance are an obstacle to the normal system of controls provided for in the Act (administrative and judicial controls). These are also important factors encountered by itinerant courts in holding hearings to issue rulings;

(c) In some civil register centres, the effect of the climate, made worse by inadequate storage units, makes the registers deteriorate faster;

(d) The parents have no interest in registering the child until school age or even later, when the need is felt. This reluctance, found above all in the remote regions, is due to various factors: distance from registration centres, cost of transport, impassable roads in the rainy season, failure to publicize the legal provisions, and above all lack of time, for the day is taken up with the work that is indispensable in order to live.

80. The following data, collected by the Ministry of Justice in 1991, reveal the number of non-registered births from 1977 to 1990. These are not, however, official statistics and the figures are only for some areas, supplied as examples. The civil register centres in Madagascar number 1,250 and are situated in the chief towns of the Firaisampokontany (former cantonal chief - towns).

Province	Registration centre	Unregistered births
Antananarivo	Antananarivo-City: five centres	8 692
	Betafo, Alakamisy Marososona, Tritriva, Ambohijatovo, Tsarafaritra, Soavina, Alarobia Bemaha, Inanantonana, Mandoto, Antohobe, Ambatotsipihina	1 362
Tulear	Betroka, Ambalasoa, Ambatomivary, Beampombo I, Benabo Toby, Isoanala, Ivahona, Janjany	6 235
	Beloha, Marolinta, Tranovaho, Kopaky, Tranoroa	5 413
Tamatave	Anosibe An'ala	447
	Anjoma Tamatave City	1 548
Fianarantsoa	Lohafary Vangaindrano	3 702
	Ivohibe, Antambohobe, Marofasika, Ivongo	2 669
Diego-Suarez	Dzamandzara (Nosy-Be)	36

2. Name

81. Article 1 of Ordinance No. 62-003 of 24 July 1962 states that "Every Malagasy shall bear a name, recorded in his birth certificate". Accordingly, every child has a name once his birth has been registered. The use of one or more forenames is authorized under article 3 of the Ordinance. These provisions respond quite well to the concerns of the Convention.

82. The use of a patronymic is optional (art. 2). The law also authorizes a change of name, but only from the age of majority (21 years) onwards; a name or forename can be changed only once (art. 4). This provision can be interpreted as meaning that, during the child's minority, the name or forename can be changed as often as desired.

83. The optional nature of the patronymic and above all the principle that the name can be changed could effect the system for protecting the name, and consequently, for safeguarding the child's identity. However, it should not be lost from sight that, in Madagascar, almost all customs are such that the name is a reflection of the person's personality. It helps to identify the soul. Each of the descendants of one grandfather has a separate personality and must be given a separate name. Moreover, the name has a near-sacred significance. It may bring bad luck, or, conversely, provide effective protection; some events (sickness, accident, death of a person bearing the same name, adoption, and so on) therefore require the name to be changed.

84. The Legislature amended article 4 of Ordinance No. 62-003 (under Act No. 90-012 of 11 June 1962), which now requires a judicial procedure in order to change one's name (Act No. 61-025 of 9 October 1961, concerning civil status documents, arts. 49-53). Previously, a change of name involved a simple administrative procedure (declaration made to the registrar in the presence of five witnesses).

85. It is also very common in some regions of Madagascar to use nicknames, that are often prejudicial to the right to an identity. Ridiculous nicknames given by parents may, of course, affect the child's personality. Indeed, they make the child lose his identity. Admittedly, by law the name is not lost simply because it is not used (prescription) and nicknames do not, in usage, acquire the status of surname, but this often happens in reality. The Legislature sought to solve this problem by stipulating that:

> "Everyone must, in legal documents concerning him, use the name and forenames appearing on his birth certificate, with the option of adding a nickname, preceded by the word 'called'."

86. The number of name changes at a few registration centres, in the year 1989 (Ordinance No. 62-003, former article 4) was:

Andapa Centre (Diego-Suarez)	0
Morombe I Centre (Tulear)	8
Maintirano Centre (Majunga)	11
Merimandroso Ambohidratrimo Centre (Antananarivo)	1

3. Nationality

87. Malagasy legislation on nationality is governed by Ordinance No. 60-064 of 24 July 1960, as amended and supplemented by Act No. 61-052 of 13 December 1961 and Act No. 62-005 of 6 January 1962, and by Ordinance No. 73-049 of 27 August 1973. Subject to future changes, article 147 of the new Constitution of 1992 retains this legislation as the "Malagasy Nationality Code".

88. Since Madagascar is not treaty-bound with other countries its national law is applicable in making sure that the child is entitled to a national identity, as recognized in the Convention, and it is in Malagasy law that solutions also have to be found to the problem of statelessness.

89. Malagasy nationality is essentially nationality by filiation. Somebody from Madagascar is not somebody who is born there but somebody who is of Malagasy stock. Hence, it is *jus sanguinis* that applies, the fact of having

the same blood as the Malagasy community. The principle is that the parent transmits his nationality to the child both in the nationality of origin and in the acquired nationality.

90. Nationality of origin is a result only of legitimate filiation (Nationality Code, art. 9) or natural filiation (art. 10). Birth on Malagasy territory is taken into account (art. 11) only if Malagasy filiation can be presumed and solely to the extent of such a presumption. Filiation must, under article 13, be established under the conditions set out in Malagasy civil law.

91. In legitimate filiation, the major role is played by the father (art. 9 (1)). The mother is taken into account on a secondary basis, i.e. when the legitimate father has no nationality or his nationality is unknown (art. 9 (2)). In the case of natural filiation, regardless of the order in which filiation is established, the mother transmits Malagasy nationality to the child. Maternal filiation is established first and foremost by the act of giving birth.

92. The law affords an opportunity to claim Malagasy nationality up to the age of majority (21 years) for a legitimate child born of a Malagasy mother (art. 16 (1)) and a child born out of wedlock when one of the parents in respect of whom filiation has been established in second place is Malagasy (art. 16 (2)). The same option is open to a child adopted by a person of Malagasy nationality if he has lived in Madagascar for five years (art. 17).

93. Ordinary legitimation, like adoptive legitimation, means that a legitimated minor acquires Malagasy nationality if the father (natural or adoptive) is Malagasy.

94. A stateless minor acquires Malagasy nationality if his parents are naturalized.

95. Since 1963, 215 declarations of Malagasy nationality have been made by minors under the terms of articles 16 and 17 of the Nationality Code.

4. Right of the child to know and to be cared for by his parents

96. A child represents a new force in the Malagasy family and his arrival is always greeted with joy. The essential purpose of Act No. 63-022 of 20 November 1963, concerning filiation, adoption and rejection, is to make it easier to establish the ties between the child and the father or mother, regardless of the legitimate or illegitimate nature of such ties, and to arrange for the child to form part of the family that is a result of marriage.

97. Maternal filiation is apparent from the birth itself. As far as paternal filiation is concerned, under article 2 of the Act, there are three kinds:

(a) Two presumptions of paternity: one in favour of the husband who is presumed to be the father of a child born or conceived during the marriage, the other in favour of the man forming part of a union under custom but not one that is recorded in the civil register;

(b) Acknowledgment of paternity, by a very straightforward procedure, either before the registrar or by a notarial or authenticated record, or by testament;

(c) A judicial ruling whereby the child - represented during his minority by his mother - can lawfully establish his paternal filiation.

98. The Act makes it considerably easier to establish filiation, but refrains from allowing incorrect filiation. Accordingly, provision is made for action so that the child can challenge his legal situation or claim another status. The father or the mother can also act to establish paternity or maternity if it is attributed to someone else. The scope of such action is none the less limited by a prohibition on any action when the child's status is in conformity with a birth certificate that has been made out in due and proper form.

99. In the interests of the child, under article 7 of Act No. 63-022 there are five categories in which children born out of wedlock are regarded as legitimate as a result of marriage. This relates chiefly to children who are born out of wedlock but whose mother and father then marry, or to children born to one of the spouses but outside of the marriage. Article 22 stipulates that a child born of adultery is a child of the marriage when the wife demands paternal recognition and the mother of the child agrees to it.

100. The effect of legal adoption is to create a legitimate tie between the child and the adoptive parent.

101. Article 62 of Ordinance No. 62-089 of 1 October 1962, on marriage, stipulates: "The spouses, by the very fact of marrying, enter into an obligation to feed, maintain and raise their children. In any event, parents are duty bound to provide food, a good upbringing and a peaceful family environment for their children."

B. Freedom of expression (art. 13), freedom of thought, conscience and religion (art. 14) and access to information (art. 17)

102. Article 44 of the Convention on the Rights of the Child requires a report on the measures adopted by States parties to be submitted within two years of ratification of the Convention. In the light of the United Nations guidelines, the question is whether, since the Convention was ratified by the National Assembly on 19 December 1990 (Act No. 90-29 of 29 December 1990), measures have been taken by Madagascar and whether specific priorities and objectives have been set in regard to the right of children to freedom of expression, freedom of thought, conscience and religion and access to information.

103. These fundamental principles are set out in the Constitution of the Third Republic. Furthermore, the Convention on the Rights of the Child is incorporated in the Preamble to the 1992 Constitution, as is the International Bill of Human Rights and the African Charter of Human and Peoples' Rights.

104. To give an idea of Malagasy positive law in the light of the provisions of the Convention, the matter may be split into two parts: the rules on the

rights and freedoms of Malagasy children; and the rules on access by children to information in Madagascar. In each instance it is important to look at the facts and determine whether the rules of law are in keeping with the real situation.

1. Rules on the fundamental rights and freedoms of Malagasy children

105. The 1992 Constitution is the basic text enunciating the principle concerning fundamental freedoms. Article 8 states that "Nationals are equal before the law and enjoy the same fundamental freedoms protected by law". A child who enjoys the Malagasy nationality of his father and/or mother is covered by these provisions. Under the laws and regulations, "child" means anyone under 18 years of age. Ordinance No. 62-041 of 19 September 1962, concerning the general provisions of internal and international law, establishes full age as 21, whereas the age of criminal and civil responsibility and for marriage purposes is 18.

106. Article 10 of the Constitution guarantees all the freedoms of opinion and expression, communication, the press, association, assembly, movement, conscience and religion. Furthermore, the exercise by the individual of the rights pertaining to personal integrity and dignity and to full physical, intellectual and moral development is organized by the State (Constitution, art. 16).

107. The Legislature (National Assembly and Senate) and the Executive ensure the exercise and protection of the rights of the individual and of fundamental freedoms, and also organize the exercise of those rights.

108. Ordinance No. 62-038 of 19 September 1962, on the protection of children, sets out the arrangements for special courts for juvenile delinquents and minors whose safety, morals, health or education are in jeopardy (art. 8). However, the family is still first in its responsibility for the physical and moral protection of the child.

(a) Freedom of expression

109. The principle laid down in article 13, paragraph 1, of the Convention on the Rights of the Child is that "The child shall have the right to freedom of expression". This right consists of the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers". This freedom may be exercised either orally, in writing or in print, or in the form of art or through any other media of the child's choice.

110. The Constitution specifies that "information, regardless of its form, is not subject to any prior constraints" (art. 11 (1)). Furthermore, it provides that "everyone is entitled to participate in the cultural life of the community, in scientific progress and the consequent benefits" (art. 25).

111. If the child is to develop physically, intellectually and morally, the parents must make sure that the child is educated. The right to choose the particular kind of education lies first with the father and mother (Ordinance No. 60-004, 15 June 1960, on the rights of families and the public authorities with regard to education, art. 3). "The purpose of education

shall be the full development of the individual and the strengthening of fundamental freedoms (Ordinance of 15 June 1960, art. 2). However, the State intervenes "when the safety, morals, health or education of a person under 18 years of age are in jeopardy" (Ordinance No. 62-038 of 19 September 1962, on the protection of children, art. 3). The State takes over from the parents and this means that it helps them or takes steps for educational assistance and appropriate supervision, or the child is referred to special courts. The special courts for the protection of minors consist of the juvenile magistrate, the juvenile court and the juvenile criminal court. The judicial authorities alone are competent when the family environment is no longer able to guarantee a child's protection and education (Ordinance of 19 September 1962, arts. 3 and 8).

112. In the interests of the child, the Convention urges States parties to guarantee a child's right to express his views on all matters affecting him and to be heard in any judicial and administrative proceedings. This right is available to the child either directly or through a representative or an appropriate body (art. 12). It should be regarded as covered by the Ordinance of 19 September 1962, on the protection of children. For example, if a child commits an offence, he is heard by the juvenile magistrate together with his parents and persons with authority over him (art. 11). Again, article 15 of the Ordinance lays down that "in other cases, the juvenile magistrate shall, in chambers and with the presence of a representative of the Department of Public Prosecutions, hear the minor, his parents, guardian and anyone whose presence he deems appropriate". Furthermore, the procedure before the examining magistrate requires the presence of defence counsel. If the minor or his representative has not chosen one, "the examining magistrate shall automatically assign counsel". (Ordinance, art. 22).

(b) Freedom of thought, conscience and religion

113. Under the terms of article 14 of the Convention, "States Parties shall respect the right of the child to freedom of thought, conscience and religion". There are few laws and regulations on this matter in Madagascar. Ordinance No. 62-117 of 1 October 1962, on religious worship, says that "the State shall guarantee freedom of conscience and freedom of worship". The limits placed on this freedom are the interests of public morals and public order. The Ordinance protects the individual against any coercion against his person, family or assets in order to compel him to practise or not to practise a religion, to contribute or not to contribute to religious costs (art. 32). The penalty for the guilty person is a fine of 25,000 to 200,000 francs (1962 Ordinance, art. 30).

114. There are no specific laws or regulations on children as far as freedom of worship is concerned. The Ordinance on religious worship is concerned only with adults. The Convention stipulates that "States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child" (Convention, art. 14). This place for the parents in choosing the education to be given to their child is provided for in Malagasy positive law (1992 Constitution, art. 22).

115. The Convention repeatedly emphasises the need to recognize the child's fundamental rights and particularly freedom of expression, thought and conscience. But it is not enough simply to recognize those rights: the child must also be encouraged to exercise them. The preamble to the Convention makes this clear in stating that "the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity".

116. A significant advance has been made in relation to previous legislation and tradition in Madagascar, an advance which is innovative and entrusts the Legislature with the task of reorienting the legislative system towards the rights of the child in the light of the provisions contained in the Convention.

117. What are the principal statutes and what are the difficulties that may be encountered? The principal statute enacted subsequent to the Convention is the Constitution of 18 September 1992. The present report has repeatedly reviewed the question of protecting the rights of the child and safeguarding of fundamental freedoms. Let us not forget that the general legal principles contained in the preamble are a part of Malagasy positive law and that the provisions of the international conventions and agreements to which the Republic of Madagascar has acceded are constituent elements of that positive law, not merely by virtue of the common rules of public international law but also by the express will of the Malagasy Assembly to incorporate the Convention on the Rights of the Child in positive law.

118. What is new, as emphasized above, is the fact that the fundamental rights of children are now formally recognized. This should promote a new attitude and a dynamic approach which sets priority on the best interests of the child. A child has rights: the right freely to express an opinion, and freedom of expression, of thought, conscience and religion. The exercise of these freedoms requires a degree of judgement and maturity on the part of the child. It is therefore assumed, in particular in article 5 of the Convention, that the parents, the extended family or the community, in keeping with tradition, will provide appropriate direction and guidance in the child's exercise of his rights. In addition, a number of the Convention's provisions make States parties directly responsible for safeguarding the best interests of the child or, alternatively, for supporting the family in its exercise of those responsibilities. The result is a system of protective relationships in which each party has its own role, rights and responsibilities.

119. The child exercises those fundamental rights; the parents provide the child with guidance; and the State establishes back-up mechanisms for direct intervention in cases where the family fails in its obligations or whenever the Convention requires it.

120. A number of difficulties may be encountered:

(a) A clear distinction must be made between children of different age groups: small children, adolescents who have not yet acquired a sufficient degree of judgement, young people who have reached a certain degree of maturity;

(b) In Malagasy tradition, a child has duties, not rights;

(c) An education system based on a clumsily applied ideology has helped to create in the minds of children a degree of confusion, and undermined their critical faculties, spontaneity and will to assert their own personalities. In such cases, children need help to adapt and to rediscover their cultural identity;

(d) It is not clear whether merely applying the provisions of the Convention in this particular area will suffice to emancipate children and restore their own authentic identity, which must be based on a new approach yet not divorce the child from his cultural roots.

121. It should simply be noted that the transitional authorities are not yet committed to taking firm steps. Society as a whole appears still to be in a kind of limbo which, we hope, will not last. Any measures taken thus far have been essentially of a token character (events during the Month of the Child, etc.), apart from an action plan to help children (National Plan of Action for the Survival of the Child and the Protection of the Environment, or PAZ), organized in September 1992 at the request of the National Environment Agency. The aim of this was to exchange experience and information in matters relating to children and the environment.

2. Rules concerning the access of the child to information in Madagascar

122. "States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health" (art. 17). The measures proposed by the Convention to the States parties consist not only in improving the means of imparting information to children (social and cultural materials, international exchanges and cooperation, children's books, regard for linguistic needs), but also in protecting them from harmful information and material. The laws and regulations on this matter in Madagascar include only such provisions as are necessary to protect minors from danger to their morals or health.

123. Hence the fact that, as regards the right to information, the State has always regulated entertainments or publications through a systems of control, protection or prohibition in order to protect the morals of children, although no legislation has been enacted governing the use by juveniles of video parlours.

Current state of the law on information

124. Statutes governing entertainment relate among other things to films and access to theatres and cinemas.

125. Ordinance No. 62-019 of 18 August 1962 on the control of films and cinematic performances makes any public showing of still or moving pictures subject to a certificate issued by the Minister of the Interior on the

advice of a censorship board (Decision No. 739 of the Minister of Information, 29 October 1980, which established a board for the control of cinema films).

126. Films shown in cinemas are classified as follows:

(a) Category A - restricted to persons of 18 years of age or above;

(b) Category B - restricted to children aged 13 or above;

(c) Category C - not restricted.

The category must be indicated in programmes and at cinema entrances (Ordinance of 18 August 1962, art. 4). Young people who appear to be below the age required by the category in question may be asked to show proof of their identity. Any cinema operator who contravenes this regulation receives a warning from the Minister of the Interior. In the event of a further contravention, the establishment is closed for up to eight days.

127. Minors below the age of 18 are banned from entering cabarets, dance halls and similar establishments unless accompanied by their parents (Ruling No. 1111 of 28 March 1966). Any infringement of these regulations is punishable by a fine of 100 to 5,000 francs (Penal Code, art. 472).

128. The authorities regard "strip-tease" shows as contrary to public morals. Such shows are therefore banned throughout the country (Order No. 3223 of 28 September 1966).

129. There is no specific legislation governing publications for young people. On the other hand, steps have been taken with regard to obscene materials (pornographic magazines, papers or publications of any kind) which constitute a threat to decency and public morals (Ordinance No. 75-015 of 7 August 1975 concerning the suspension of newspapers and periodicals likely to endanger public order, national unity or public morals).

130. Sanctions may be applied under article 473 of the Penal Code against persons who exhibit indecent posters or pictures in public places. Offenders may be fined 500 to 25,000 francs and face up to 29 days' imprisonment.

131. We would also draw attention to the establishment within the Ministry of Education of the Schools and Out-of-School Resources Service (OPPS) which provides educational establishments with appropriate auxiliary teaching materials (Decree no. 92-121 of 29 January 1992, defining the powers and general organization of the Ministry of Education).

132. Changes have become apparent as a result of the arrival on the Malagasy market of video cassettes which are subject neither to prior censorship nor to specific legislation on their commercial use. At the same time, the media are the domain of certain privileged individuals and are used by the political class to spread ideas in a way which amounts to disinformation. In addition, there is a paucity, or indeed near absence, of cultural programmes for children both in the mass media and in the creative arts (songs, drama and music, books, etc.).

(b) Availability of information to Malagasy children

133. What steps should be taken to make information more accessible to children? It seems unnecessary here to draw a distinction between the socialist and post-socialist periods, since there have been no radical changes.

134. For a number of years, there has been a manifest imbalance, as apparent in the gulf between the great majority of children and the more or less privileged minority which has easier access to information. Since virtually no cultural material for children is produced locally, those for whom foreign materials are out of reach (for financial or linguistic reasons) are deprived (or nearly deprived) of information, all the more so since the majority have undergone a process of absorption into Malagasy culture that has impeded any opening up towards foreign languages and cultures.

Privileged children

135. These are the children who have opportunities to experience life in their own localities and have access to cultural materials from abroad. They have opportunities to:

(a) Travel at home and abroad;

(b) Visit foreign cultural centres (which assumes a knowledge of foreign languages);

(c) Obtain imported materials (books, videos, etc.);

(d) Learn at least one foreign language (especially French).

It must therefore be said that only very few children (out of millions) currently have access to information and this will not change until social privileges are shared equitably and a coherent policy to assist children is implemented.

136. While the certification (A, B, C) system has operated in cinemas for several years, and while there are regulations governing pornographic materials, there are no regulations on public video parlours, which charge 250 FMG. for admission and cater to a clientele ranging on average from 12 to 50 years of age. There is no system for vetting either the films shown or the customers who frequent the parlours. This sector in all countries is developing without regulation and cannot be entirely absolved of blame for the current rise in violence.

137. There appears at present to be no strict protection of children from harmful information. In spite of the ban on pornographic films, the competent authorities have not acted to stop them being imported and shown in video parlours, which are open to all and sundry.

Recommendations

138. Clearly, any initiative to promote the interests of children can only come from adults. In any event, adults must establish a framework of support and protection for children on the basis of their experience and knowledge. However, action in favour of children should in future increasingly involve the effective participation of those most directly concerned. Genuine and effective use of participatory methods is essential if children are to acquire real freedom of expression.

139. In our view, if that precondition is not met, many good intentions will come to nothing. The desirable initiatives would include:

(a) Stepping up international cultural exchanges (organized trips, school twinning and other such schemes);

(b) Decentralizing and expanding the network of cultural places and expanding their resources (works of art and other materials);

(c) Making it easier to travel at home (organized trips, vacation colonies, etc.);

(d) Tightening up the monitoring of the implementation of regulations;

(e) Reorganizing civic education (not, however, in its present moralistic form, but in a modern and attractive way).

C. Freedom of association and peaceful assembly (art. 15)

140. There is no statute dealing specifically with the protection of children's rights in this matter. Parents are responsible for ensuring that their children are educated and for choosing an environment in which they can develop physically, intellectually and morally.

D. Protection of privacy (art. 16)

141. The child is deemed normally to live with his family, and enjoys all the protection accorded to the family by law with regard to interference in the home, tampering with correspondence, defamation and slurs on character, etc.

E. Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

142. The protection of children is governed primarily by Ordinance No. 62-018 of 19 September 1962. However, only a minority of cases brought before the juvenile magistrate benefit from this statute, even though Madagascar has a young population.

143. Cruelty and ill-treatment of children are facts of life in Madagascar (unworthy or alcoholic parents, poverty, etc.). At the same time children are regarded principally as a source of income (begging, domestic work, etc.), but are not entitled to enjoy the money they earn.

144. The above-mentioned statute is fairly comprehensive and complies with the provisions of article 40 of the Convention. However, there are obstacles to its application, in terms both of resources and of traditions. The situation is exacerbated by a shortage of social workers at fokontany level.

145. Article 37 of the Convention sets out a number of prohibitions protecting the child from treatment which constitutes an assault on his dignity, personality, physical integrity, liberty or very existence. It might appear from paragraph (a) that this particular provision concerns children undergoing trial and subjected to torture, cruel, inhuman or degrading treatment, or sentenced to a punishment which endangers their physical or moral security, or to capital punishment or life imprisonment. However, what follows applies equally to any child who is a victim of violence.

146. To begin with, we should refer to the relevant provisions of the International Bill of Human Rights concerning in particular the inviolability of the human person, which are an integral part of Malagasy positive law, as well as article 13 of the Constitution of 18 September 1992, whereby "the inviolability of person of every individual is guaranteed", and article 17, whereby "the State ensures the exercise of rights guaranteeing for the individual the integrity and dignity of his or her person". These provisions apply both to adults and children.

147. The Penal Code includes a number of penalties in cases of violence towards children. Under article 312 any one who deliberately injures or assaults a child below the age of 15 years or who inflicts other forms of violence such as deliberate deprivation of food or care is punished. Violence and assault resulting in mutilation, amputation, loss of the use of a limb, blindness or other permanent disability are considered aggravated crimes and punishable by imprisonment with hard labour. All the provisions of the Penal Code relating to the illegal restraint, detention or arrest with torture also apply in cases where minors are the victims.

148. As regards more specifically minors who have committed an offence, Ordinance No. 62-038 of 19 September 1962, on the protection of children, stipulates that they may be subject to educational counselling or to punishment. In the latter case, the child is fully entitled to plead extenuating circumstances on the grounds of age, which reduces the sentence and mitigates the severity of the penalty.

149. In the case of a juvenile who commits a crime incurring a severe penalty, the age of the individual may still be accepted as a mitigating factor. In such a case, where the juvenile concerned is under the age of 16 and held to be criminally responsible, the justifiable plea of mitigation based on age means that he will not face capital punishment or life imprisonment with hard labour, in conformity with the provisions of article 37 (a) of the Convention. On the other hand, if the juvenile is over 16 but under 18 years of age, his age will not automatically be accepted as a mitigating factor. If the offence is punishable by life imprisonment, the Juvenile Criminal Court may exceptionally hand down a special substantiated decision rejecting the plea of mitigation. However, article 46 of the same Ordinance clearly states that "in no case shall capital punishment be imposed on juveniles under 18 years of age".

150. Any child deprived of his liberty must receive preferential treatment over adults, and must in particular be housed in separate accommodation. These provisions will be described in greater detail in connection with Special protection measures, particularly on the topic of children in conflict with the law.

151. At this point, it is not possible to avoid mentioning once again the gulf between the statute book and actual application of the law. Numerous obstacles impede the application of article 37 (a) of the Convention and these have been frequently referred to in the present report:

(a) Violence against juveniles is in reality a frequent occurrence, but all too often slips through the net of judicial sanction for want of investigation and social protection. In rural areas a highly scattered population constitutes a fundamental obstacle since law-enforcement officials are far away and there are few, if any protective social structures;

(b) In many areas, families traditionally take the view that violence against children is best dealt with within the family or village community, except in particularly serious cases;

(c) In spite of the efforts made by the prison administration, the statutory provisions and the instructions issued by the competent authorities to ensure humane treatment of juveniles and safeguard their moral and physical security, health and physical integrity go largely unheeded: the most serious problem is prison overcrowding. It is not possible to set aside special accommodation for juveniles, or to separate those who are on trial from those who have been convicted. According to a survey conducted from 1980 to 1985, the total prison population in 1980 was 12,968, a figure which included 162 women and 24 juveniles serving sentences and 308 women and 352 juveniles on remand. In 1985, the total reached 23,618, including 177 women and 61 juveniles serving sentences and 400 women and 925 juveniles on remand.

152. Our immediate efforts with regard to penal establishments are thus focused on specific improvements and on restoring the only State re-education centre for juveniles, which has a capacity of only 100 to 120.

153. Magistrates responsible for the protection of children are trying to avoid imprisoning juveniles and instead to create the conditions in which educational counselling measures may be implemented.

154. Wide circulation of the Convention on the Rights of the Child could have at least two positive consequences:

(a) It would inform parents and make them more aware of the problems;

(b) At the same time, it would make juveniles aware of their rights and help them to defend themselves, to the extent that they have reached the age of reason and their home circumstances and education permit.

This may seem utopian. It may also be misunderstood by families still attached to the tradition of "the infant king who only has duties". Nevertheless, every provision in the Convention calls for a change in the ideas, principles and traditions which at the moment condemn children to the passivity and inaction which traditionally have been their lot.

IV. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance (art. 5)

155. Article 5 of the Convention provides that States parties shall respect the responsibilities, rights and duties of persons legally responsible for the child, to provide, in a manner consistent with the evolving capabilities of the child, the appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention.

156. To begin with, under article 1 of the Convention, a child means every human being below the age of 18 years. In Malagasy legislation, there are different kinds of majority. Eighteen years is the age at which a person ceases to be a minor in criminal proceedings, within the meaning of article 3 of Ordinance No. 62-038 of 19 September 1962, which provides that, under Malagasy law, the State shall take action "to aid and assist the family in its role of natural educator of a child when the security, morality, health and education of the child under 18 years of age are in jeopardy". Furthermore, Ordinance No. 62-041 of 19 September 1962 sets the age of civil majority at 21 years. However, the Act of 20 November 1963, on filiation, adoption, rejection and guardianship, provides for full legal capacity for a minor if he marries and it may also be granted to him at the age of 18 by his legal guardian, under an appropriate legal procedure. Lastly, by the Ordinance of 1 October 1962, full age for the purpose of marriage was set at 18.

157. The result of these statutes is that 18 is usually considered the age of majority under Malagasy law, with, however, the notable exception of the age of civil majority, which is set at 21. It would, however, be desirable if 18 could be set as the normal age of majority under Malagasy law. The electoral law, moreover, establishes that 18 is the age required to exercise the right of vote.

158. The provisions of article 5 are entirely in keeping with the pattern of the Malagasy family. In the old tradition, the extended family and of the head of the family played the major role in guiding the upbringing of the children. Although ancient custom did not expressly acknowledge that children had rights, but rather that they had "duties" towards their parents and grandparents; so the relatives and the members of the extended family community were chiefly responsible for making sure the child was protected.

159. This tradition has been steadily maintained, both in the statute book and in legal custom. The first Malagasy Constitution, of 29 April 1959, included the following provisions in the preamble: "The family is the natural basis of human society. The State protects and fosters its cohesion. Parents have the right and the duty to bring up their children and give them the best moral, physical and intellectual training. Every child is entitled to education and instruction, which shall be provided by the parents and by the teachers chosen by them." Articles 1 and 2 of the Ordinance of 19 September 1962, on the protection of children, stipulate:

> "Article 1. The child shall have a privileged place within the family. He is entitled to the fullest possible material and moral security.

Article 2. The responsibility for his education lies first and foremost to the family, which shall ensure the harmonious development of his personality."

Article 37 of the Constitution of 31 December 1975 provided that: "The State shall protect the family unit, women and children and shall recognize that every one has the right to establish a family and to bequeath his personal property." Lastly, articles 20 et seq. of the new Constitution, of 16 September 1992, clearly sets out the roles the State and the parents must play in protecting and educating children:

"Article 20. The family, which is the natural and fundamental unit of the society, shall be protected by the State. Everyone is entitled to found a family and to bequeath his personal property.

Article 21. The State shall protect the family, to allow its free development, and also protect the mother and the child by legislation by appropriate social institutions.

Article 22. The State shall, so far as it is able, strive to take all necessary measures to ensure the intellectual development of every individual, with no limitation other than the individual's capabilities.

Article 23. Every child shall be entitled to instruction and education, for which the parents shall be responsible and their freedom of choice shall be respected. Every adolescent is entitled to vocational training.

Article 24. The State shall organize public education, which shall be free and open to all. Primary education shall be compulsory for everyone.

Article 25. The State shall recognize the right to private education and shall guarantee the freedom to teach, subject to the legal requirements concerning hygiene, morals and capability."

160. Various provisions of Malagasy law concerning the family resort to custom for the appointment of the persons to protect the child. For example, article 95 of the Act of 20 November 1963, in the provisions concerning guardianship, stipulates that when the mother and father have died or are not in a position to express their wishes, guardianship shall be exercised by the person who, in accordance with the law or custom, has authority over the child.

Problem of the couple

161. Article 5 of the Convention makes reference to the parents. The same is true of various other articles of the Convention. But what does "parents" mean? Is it a couple married in accordance with the law before a public official (registrar), or, extending the sociological definition, is it the father and the mother who form a lasting union and parents of the child by blood? If it means keeping to the definition of a married couple under

positive law, in Madagascar as in many developing countries, such couples are in the minority. The fact is that where the mother and father by blood form an actual and lasting union, the children born of that union are entitled to the same protection and have the same prerogatives as are accorded to children born of a legally established union, and furthermore in some cases consecrated by a religious ceremony. This important problem, which is tied in with that of the organization of the civil status, should be constantly borne in mind in the question of protection of the child.

162. A child, within the meaning of the Convention, is mainly protected by the father and mother, who shall provide direction for his education and his development, in accordance with his capacities.

163. The purpose of marriage before a registrar is to strengthen this protection through the obligations that stem from marriage. In the Ordinance of 1 October 1962, the Legislature defined marriage as "a civil, public and solemn act whereby a man and a woman establish a lawful and lasting union between them". However, such a definition should not absolve the natural parents of their duty to provide direction and advice, nor should it cut down the role the Convention assigns to the States parties vis-à-vis parents.

164. In Malagasy tradition, as in the statute book or legal precedent, the extended family, the guardians or other persons legally responsible for the child must take action in the event of temporary failure, impediment or inability on the part of the mother and father. In essence, the couple bears the main responsibility for guiding and advising the children. The extended family or any other persons appointed by the law or custom intervene as a "back-up" and compensate for the failure of the natural parents to assume this responsibility.

165. Article 5 makes provision for appropriate direction and guidance in the exercise of the rights laid down by the Convention, rights which are discussed in other parts of this report. Here we will only mention certain rights whose exercise by a child who has attained some degree of maturity calls for appropriate direction and guidance by the parents:

(a) Article 6. The right to life and cooperation between States and parents to ensure the survival and development of the child;

(b) Article 7. The right to a name: Malagasy law permits a change of names under certain conditions, by a judicial procedure;

(c) Article 7. The right to a nationality, the right to know one's parents ...;

(d) Article 8. The right to preserve one's identify;

(e) Article 9. The child's right to maintain personal relations and direct contact with his parents;

(f) Article 12. In so far as the child is capable of forming his or her own views, the right to express those views. The concept of forming one's own views has to be defined by criteria that the law can help to specify;

(g) Article 13. Freedom of expression;

(h) Article 14. Freedom of thought, conscience and religion. This article poses the problem of any conflicts between the authority of the family group and the ability of a child to form his or her own views. Madagascar's long-standing traditions may constitute obstacles in this area;

(i) Article 15. Freedom of association;

(j) Article 16. The right to respect for the child's personality (privacy, correspondence, honour, reputation);

(k) Article 17. The right to information.

166. The responsibility of the parents should be exercised jointly: this appears to be the meaning of the expression "parental". However, absolute equality of the mother's and the father's prerogatives has not yet been accepted in Malagasy positive law, although tangible progress has been made in legislation over the past 20 years. It might be said that parental duties involve some "complementarity". Each parent performs these duties in keeping with his or her abilities and tasks are distributed, as far as possible with harmony and understanding.

B. Parental responsibilities (art. 18)

167. As to the joint responsibility of bringing up the child and the preponderant role of the parent, the explanation given above would appear to suffice. However, the Convention introduces a particularly significant concept namely the best interests of the child. This means not just the "interests", a term which has become commonplace and therefore inadequate, but the "best interests", which have to be examined in each instance. An immediate interest could, for example, require the child to be placed in a reception centre. But might not the best interests of the child be to seek out his natural parents or to place him in a family of the wider group?

168. But article 18 explains the action of the State as being the development of institutions, facilities and services to ensure the well-being of children. In Madagascar, on account of the economic situation State services are much more oriented towards assistance by private agencies than towards the creation of structures, facilities or institutions. The result is a sometimes anarchic kind of development and no regulation of the non-governmental organizations.

169. It would be desirable to strengthen social structures, to extend their scope of action outside of the big towns, to devise more detailed regulations involving actual assistance by the State and participation by international agencies. In other words, the need is for a tripartite understanding that calls for trust between the State, the NGOs and the international agencies. Starting from this basic idea, a national council for the protection of children could be established, as could a national foundation for children - a legal body which does not exist in Madagascar and might be introduced with innovations suited to the national situation.

C. Separation from parents (art. 9)

170. Article 9 of the Convention appears to have been conceived especially for those countries which have suffered or are suffering particularly serious social unrest. However, the article can be applied in Madagascar in several cases:

(a) If, after the parents have separated, care of the child can not be entrusted to either of them because of their dangerous behaviour;

(b) If a custodial sentence has been imposed on one of the parents and if the other parent is morally or materially incapable of looking after the child;

(c) If the child has been subjected to ill-treatment by his parents (Penal Code, art. 312 (8));

(d) If the child is the victim of indecent assault, committed by one of the parents (Penal Code, arts. 331, 333, 334 bis).

171. In all these cases, a court decision to withdraw the child from the custody of the parent is necessary. This decision is based on the provisions of Ordinance No. 62-038 of 19 September 1962. It is essentially a question of measures for the protection and educational assistance.

172. The provision of the earlier Act regarding loss of parental authority (Act of 24 July 1889), which was formerly applicable to a minor who had "French citizen" status, no longer appears applicable. It would, moreover, be paradoxical if a French Act that was subsequently amended by French legislation (French Civil Code, arts. 378 et seq.) were to remain applicable in Malagasy legislation, which in 1973 repealed the effects of the 1960 agreements that provided for the continuation of certain provisions of French law.

173. The act establishing special legislation for wards of the State provides protection more particularly for children whose parents have died in the performance of their duties in the service of the nation (Act of 13 July 1962).

D. Family reunification (art. 10)

174. This article was clearly designed for those countries which are experiencing exceptional situations such as armed conflicts, civil wars, social unrest caused by regional or tribal rivalries, situations that are virtually non-existent in Madagascar. Should they occur, the law on the family, as derived from the Act of 20 November 1963 on filiation, and the Ordinance of 1 October 1962 on marriage and the Ordinance of 19 September 1962 on the protection of children is enough to embark on negotiations to facilitate relations between the child and the parents living in a foreign State.

175. However, this article could be applied, especially paragraph 2, in the following cases:

(a) De facto separation of the couple leading to dispersal of the family and separation of the children from the father and mother living in a neighbouring region or State;

(b) If divorce proceedings are under way or have ended and the custody of the children has been given to one of the parents living in another country;

(c) If there is de facto separation or the abandonment of the conjugal home by one or other of the spouses, a mixed marriage is sometimes much more unstable than one between persons of the same nationality;

(d) If there is a marriage or union between nationals of Madagascar but one of the parents acquires a foreign nationality or settles abroad after the couple separate.

176. In these cases, difficulties may arise if there is a conflict between the parents over the custody of the child, the right to visit, and the opportunity for the child to have direct and regular contacts with his parents. These difficulties can, wherever possible, be settled amicably or through officers of the courts, and in particular through lawyers who have counterparts abroad, or through consular authorities. Should the occasion arise, diplomatic intervention may be necessary. Lastly, the judicial authorities of each of the countries concerned could be seized of the matter and solutions forced on the parents in the best interests of the child. Nevertheless, unless there is a convention on judicial cooperation, the only law that can be invoked must be the Convention itself, provided it has been ratified by the States concerned.

E. Recovery of maintenance for the child (art. 27)

177. In the case of Madagascar, recovery of maintenance presents difficulties in a situation in which a marriage is in a state of crisis or of a conflict between the father and the mother of the child, once filiation with the child is legally established and justifies the obligation to maintain the child.

178. The situations mentioned in article 27, paragraph 4, are concerned precisely with measures so that the parent who is in charge of the child and has obtained a court decision granting maintenance for the child, can secure enforcement of the decision. The cases involved are generally those listed in section D above. In this instance, two general hypothetical situations should be identified:

(a) The two States involved, in other words, the one in which the child and the parent who has custody reside, and the one where the parent who should provide maintenance lives, have signed judicial cooperation agreement whereby, in one of the countries, the decisions rendered by a court of the other country can be enforced. They should normally be enforced under the terms of the agreement and the relevant rules of private international law;

(b) In cases where no agreement has been concluded, the parent who has custody should be able to invoke the provisions of the Convention on the Rights of the Child, provided it has been ratified by both parties, and through the consular authorities demand enforcement of the court decision he has obtained in his own country.

In both situations, if the parent who should provide the maintenance could declare that he is bankrupt, the States in which he resides should take all appropriate measures, within the framework of its legislation, to secure execution of the decision.

F. Children deprived of a family environment (art. 20)

179. This provision relates to a child who, by a decision delivered by the State or on account of a particular family situation (death of the members of the family, abandonment of the child according to the traditional forms not recognized by Malagasy positive law but sometimes applied outside of the legal provisions) is deprived of the family environment that forms his natural protection. Article 20 specifies that the State shall replace the family, either through some form of placement or special assistance.

180. The legislation already being applied in Madagascar is completely consistent with the provisions of the Convention. The Ordinance of 19 September 1962 expressly provides that "the primary responsibility for his upbringing lies with the family ... Nevertheless, when the safety, morals and health of a child under 18 years of age are in jeopardy, the State shall intervene, either to assist the family or to take the appropriate measures to provide for his upbringing and supervision ... (arts. 1, 2 and 3 of the Ordinance). These measures to assist in the upbringing of a child include, in particular, the State's obligation to find a substitute family for the child or to place him in an institution (a centre, foster home, a boarding school etc.) conductive to his protection and development or else to give special assistance if the child is already in the care of welfare agencies.

181. The child may also be taken away from his family environment in his own interest, particularly in cases of exploitation, ill-treatment, violence or cruelty or of moral or physical neglect.

182. State intervention in Madagascar takes many forms and the State's action is supplemented by non-governmental organizations engaged in the protection of children and young persons. In the first place, there are the activities of the Ministries concerned (currently the Ministry of Population), to coordinate and monitor the work of the non-governmental organizations. The Ministry also endeavours to obtain the cooperation of the local organizations in order to set up prevention, care and social reintegration systems. In the second place, the courts order educational assistance and suitable measures for proper supervision of the child. Before these measures are taken, investigations are carried out by the court social services or by volunteers in whom the judges have confidence.

183. Any child concerned, on the basis of a substantiated court decision, receives State assistance in the form of a moderate sum of money paid out of the budget of the Ministry of Justice. This sum, which is insufficient, is

none the less supplemented by regular support from the non-governmental organizations, some of which receive private financial assistance.

184. It is unfortunate that the judicial authorities are required to perform duties and assume responsibilities that should normally be shouldered by specialized State agencies. However, the situation is changing. In view of the growing dangers facing young people and the increase in the number of children whose health or morals are in jeopardy, more should be done by the State to provide for their upbringing and sometimes their survival and therefore their protection. In the immediate future, this State action requires material and financial means as well as specialized training and supervision which cannot be obtained for the moment, considering the prevailing economic and social situation. Yet the projects of the Ministries concerned and especially the Ministry of Population are directed towards action on a broader scale and more effective cooperation with the non-governmental organizations.

G. Adoption (art. 21)

185. In Malagasy tradition, as seen in oral and written customary law, it was a common practice to adopt a person of full age or a minor, and it was done for various reasons that were not necessarily in the interests of the child. For example, the purpose of an adoption could conceivably be to create a fictitious bond of kinship between the adoptive parent who was seeking material gain or prestige or the adopted person who was an eminent person with moral or religious authority or was rich. It was a known fact that the last Malagasy Head of Government, before the arrival of the French, Prime Minister Rainilaiarivony, had been adopted many times.

186. In the legal practice introduced by French courts on the subject of traditional law, the form of adoption was changed and it became the preferred, if not the only, way of recognizing an illegitimate child. Under the influence of French law, and since traditional law made no provision for recognizing a child born out of wedlock, the so-called "native" courts considered that traditional adoption was as good as recognition of the child. This development considerably advanced the concept of adoption as a means of protection. Adoption became a veritable institution which led to a bond of kinship between the adoptive parent and the person adopted.

187. When independence was restored, the Malagasy legislature could not therefore abandon such a common institution, to which colonial legal practice had given fundamental social and legal importance. Nor could it permit the development of a tradition with forms that were too simple and were likely, through a large increase in adoptions, to create disorder in family groups. The measure adopted by the Malagasy legislature, in the Act of 20 November 1963, amending the rules of filiation and of adoption in particular, was directly inspired by the best interests of the child when it provided for the right to filiation, while at the same time restoring order to adoption as an institution.

188. Thus, on the one hand, the right to filiation of a child born out of wedlock was formally recognized and set forth in articles 4, 5, 16 and 32 and, on the other hand, a new institution was created, on the basis of traditional

adoption. Articles 51 to 66 of the Act of 20 November 1963 established legal adoption, which artificially creates a bond of kinship between the adopter and the adoptee and confers upon the latter the status of a legitimate child.

189. In view of the additional and considerable importance of this consequence of legal adoption, it has been subject to rules, intended as far as possible, to safeguard the best interests of the child. The provisions of article 21 (a) are respected to the greatest possible extent. Such an adoption is declared by the competent court, which takes into consideration the justifiable grounds and the interests of the adoptee. The conditions regarding consent stipulated in the Convention are respected by Malagasy law.

190. Nevertheless, experience would suggest that the provisions governing legal judicial adoption between Malagasy nationals should be improved. In particular, it is difficult to see why persons who are under 30 years of age or have more than three children alive cannot apply to a legal adoption order (Act of 20 November 1963 (art.53). If the means of the adoptive parent so permit, and if the general principle of reuniting members of the same family is to be applied, it is surprising that article 55 of this Act prohibits the adoption of more than three children. Again, what is the scope of the term "abandoned children", referred to in article 56 of the same Act. If the real parents reappear, is there not a risk of conflict between the adoptive parents and the natural parents?

191. While, subject to improvement, the provisions on legal adoption between nationals do seem valid and do sufficiently protect the interest of the child, Malagasy law none the less has considerable lacunae compared with article 21 (b) to (e) of the Convention, namely inter-country adoption of the Malagasy national. The precautions recommended in subparagraphs (b), (c), (d) and (e) should prompt the lawmakers to supplement the rules of the Act of 20 November 1963 or to pass a special law affording an opportunity to conclude, with countries where there is a large number of adoptive parents, bilateral agreements to protect and monitor the best interests of the child.

192. Besides, traditional adoption has been maintained by articles 67 to 68 of the Act of 20 November 1963. The formalities are much simpler because they are the subject of a statement made before the registrar of births, deaths and marriages. On the other hand, the consequences are much less important than those of legal adoption. In the case of a traditional adoption, a legal document is drawn up to create a bond of fictitious kinship or to draw the bonds of kinship or of alliance closer between two members of the same family. In legal judicial adoption, the adoptee ceases to belong to his family of origin, but under the system of simple adoption the link with the family of origin is maintained.

H. Illicit transfer and non-return (art. 11)

193. The purport of article 11 of the Convention is, above all, to protect children against violations of their right of movement, violations which occur when there are serious disturbances such as wars, internal conflicts and political instability. From this point of view, the Republic of Madagascar is not directly concerned by the application of this article.

194. However, because of the general tenor of this article, it can be applied to various situations that could affect Madagascar, and for two reasons in particular:

(a) Madagascar is an island, but it is surrounded by several countries or regions which can easily be reached by sea (Mauritius, the Comoros, Seychelles, the east African coast, southern Africa and Mayotte and Reunion, which are territories governed by French law);

(b) Madagascar is increasingly becoming an air traffic hub between Africa, Europe and Asia. Certain instances of illicit transfer and non-return of children may occur, for example:

(i) In a mixed marriage, if a crisis occurs in the marriage, the result may be marital problems, abandonment of the family by one of the spouses, de facto separation, divorce;

(ii) In the case of an unmarried couple, an unexpected pregnancy may produce a break-up and one of the parents will go to live abroad;

(iii) A child who is deprived of his family and may be taken care of and brought up by a foreign family, which may take the minor abroad against his will.

In these such situations, children may be taken away by one of the parents or by an adoptive family. Although no specific case has come to light, the Malagasy authorities are currently undertaking a study which should lead to the protection of children who are held on Malagasy territory against their will.

195. Again, although there are no bilateral agreements with other States, the Malagasy diplomatic authorities receive recommendations containing information on cases of children of Malagasy nationality who are being held abroad against their will.

I. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

196. Article 19 of the Convention relates to acts of violence and neglect or negligent treatment of children. Malagasy criminal law has many provisions on this subject.

197. Under these provisions, the child, because he is weaker physically, should be protected at all stages (the child who has been conceived, the unborn child, the young child, the adolescent, the young person under 18 years of age). Article 317 of the Malagasy Penal Code punishes abortion, both the person who has caused the abortion and the woman who has had an abortion. Articles 345 and 473 punish the acts which harm the condition, the legal existence or the identity of the child. Article 312 of the Code punishes assault and battery, deprivation of food and of care. Rape or indecent assault of a minor is punishable under article 355, and corruption of a minor under 15 years of age is punishable under article 351. The kidnapping of

a minor is covered by article 354 and the prostitution of minors by article 354 bis. This would seem to be more than adequate, but several difficulties stand in the way of effective action.

198. A few examples are given below:

(a) Because the island is large, the rural population is widely scattered, several regions are cut off and communications are difficult, children in the rural population are much less protected than children in the towns and cities, especially as the number of persons in law enforcement (courts and police) is inadequate outside the urban centres;

(b) Because of tradition, the fear of having to have to deal with the authorities or yet again of the tendency in traditional circles to settle conflicts within the family group or the traditional community, many cases of the physical violation of children go unpunished;

(c) In the urban centres, social welfare and protection staff is inadequate, if not non-existent, while the members of the urban police force are already overwhelmed by the rise in crime in general.

199. As a result, many incidents of brutality or neglect of children are hidden or not reported and are not subject to any criminal action because of the indifference of the population. However, the Malagasy Government is doing its utmost to sensitize the categories of persons who are close to the young (teachers, the medical corps, administrative bodies, religious authorities) so that the concern to report the acts of violence against children to the competent authorities will be more effective.

200. Moreover, the role of the juvenile magistrate is particularly important not simply because he is vested with authority to punish offences. Under the Ordinance of 19 September 1962, on the protection of children, the juvenile magistrate can order preventive protection measures for children who have been ill-treated and can place the children whose physical integrity is particularly at risk in hospital centres, reception centres, or even in families who volunteer to take them. Such measures are accompanied by supervision by the welfare services, where they exist, or by the juvenile magistrate himself, who delegates the welfare assistants for that purpose or even officers of the police or gendarmerie.

201. These measures, however, are proving inadequate. They need to be supplemented by further preventive social protection measures; for the moment this is impossible because of the financial and material expenditures the State would have to allocate in an unfavourable economic situation. Moreover, the number of non-governmental organizations able to act in place of the State is still very insufficient.

J. Periodic review of placement (art. 25)

202. Article 25 of the Convention makes provision for the supervision of measures of protection taken on behalf of a child who is in danger.

203. In Madagascar, in the context of the legal protection of children (Ordinance of 19 September 1962) the juvenile magistrate is vested with total authority to prescribe measures of supervision, to undertake social investigations and to alter the conditions of a placement after he has made a check on them. It is clear, however, that because of the notable increase in the cases dealt with in the courts, the insufficient number of magistrates and the fact that the courts are dispersed, despite the efforts made at regular intervals by the Government, the supervision of protection measures is inadequate and sometimes deceptive. Studies are currently being conducted with a view to establishing administrative social protection structures and to making the activities of non-governmental organizations more effective by more efficient financial technical assistance.

K. Statistical data

204. States parties are requested to provide a variety of statistical information on family environment, children in moral danger and placements. However, the statistics compiled do not correspond to those requested for the report. The only reliable statistics are those furnished by the courts; but, because of the insufficient number of courts and the fact that they are scattered, the statistics provided represent only a tiny proportion of the children actually involved. Moreover, other items of information requested are impossible to obtain, such as the breakdown by age group, ethnic background and the number of children who are abused or neglected without the judicial authorities or police being notified. Finally, a clear distinction must be drawn between children in rural environments and children in urban environments, for the latter can avail themselves of administrative, social (NGO) and judicial protection which is much more efficient, even though inadequate.

205. It is true that surveys have been conducted on the initiative of international agencies, and UNICEF in particular, but the competent services of the Republic of Madagascar are currently attempting to develop statistical machinery that meets international standards. In the meantime, the following statistics are submitted, mostly from juvenile courts, with the aforementioned reservations.

1. Minors in moral danger

206. Minors in moral danger are those whose moral, material and even physical safety are threatened, inter alia, for the reasons given in sections C, E, F, H and I. The figures submitted seem very low, but they relate to only one or two built-up areas, including Antananarivo, and minors who have been the subject of judicial action.

Minors in moral danger

Year	Boys	Girls
1989	100	89
1990	58	69
1991	64	43
1992	86	82

2. Recovery of maintenance

207. The statistics in the possession of the Republic of Madagascar concern only recovery on national territory of maintenance payable for children under Malagasy legislation.

208. It should be borne in mind that this legislation is found in:

(a) The Ordinance of 1 October 1962, which stipulates in articles 60 and 61 the obligation of parents to feed, support, bring up and educate their children. A legal procedure is envisaged to constrain a defaulting parent to meet his maintenance obligation;

(b) For marriages in crisis, the Ordinance of 1 October 1962 provides a procedure of attachment of salary or legal action. Execution is not always a simple matter, particularly if the defaulting parent makes sure that he is insolvent;

(c) In the event of divorce proceedings, the provisional decisions on the separated couple usually make provision for maintenance for the children. The maintenance is usually paid to the parent who has temporary custody of the children. After the divorce becomes final, the parents continue to be under the obligation to maintain their children. Generally speaking, the legal decision pronouncing the divorce provides for measures for the custody and the award of maintenance for the children;

(d) In the event of default by a parent, the Ordinance of 4 May 1960 prescribes proceedings against the parent for abandonment of the family which may result in a conviction;

(e) A general principle of law invariably respected by Malagasy courts prescribes that it is not the institution of marriage itself that is the source of the maintenance obligation of the father or the mother, but also the fact of procreation. Consequently, children born outside wedlock are entitled to maintenance which their guardian may claim from a defaulting parent. The same applies to minors whose material safety is at risk in the event of conflict as to the custody, rejection or filiation of children.

209. In the light of these explanations, the following statistics are submitted with the reservation to the effect that they concern only cases referred to the courts and in particular the Court of First Instance of Antananarivo:

1986

Orders made in the course of divorce proceedings	1 420
Proceedings in respect of conflicts regarding the contributions by the spouses to household expenses	666
Proceedings concerning the attribution of guardianship and possible repercussions on the award of maintenance	374
Proceedings for abandonment of family	574

1987

Orders made in the course of divorce proceedings	1 525
Proceedings in respect of conflicts regarding contributions by the spouses to household expenses	624
Procedures concerning the attribution of guardianship and possible repercussions on the award of maintenance	590
Proceedings for abandonment of family	410

1988

Orders made in the course of divorce proceedings	1 646
Proceedings in respect of conflicts regarding contributions by the spouses to household expenses	775
Proceedings concerning the attribution of guardianship and possible repercussions on the award of maintenance	7 534
Proceedings for abandonment of family	331

1989

Orders made in the course of divorce proceedings	1 671
Proceedings in respect of conflicts regarding contributions by the spouses to household expenses	1 417
Proceedings concerning attribution of guardianship and possible repercussions on the award of maintenance	665
Proceedings for abandonment of family	258

3. Adoption

210. The statistics are incomplete and relate only to the Court of First Instance of Antananarivo. However, it is noteworthy that the adoptions mentioned concern intra-country adoptions.

1987

Legal adoptions	220

1988

Legal adoptions	327

1989

Legal adoptions	296

	1990
Legal adoptions	156

V. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

211. Article 28 of the Convention is concerned solely with education, strictly in terms of primary, secondary, vocational and higher education. The article establishes the right of the child to education on the basis of equal opportunity.

212. Education is certainly the sector which has experienced most difficulties, changes of direction and fundamental choices in Madagascar. It therefore seems necessary to summarize very briefly the trends in education policy over the last 20 years.

213. Between 1970 and 1980 the public education system expanded rapidly at all levels. At level 1, the numbers rose from 870,000 in 1965 to 1,410,000 in 1985. Secondary education experienced equally rapid development, while the University of Madagascar created in the five Faritan capitals regional university centres which are awarded the status of independent universities in 1989. From 1975 to 1985, the total number of students increased from 9,000 to 38,000 and it has continued to grow. Reference has frequently been made to the "emigration" of students to foreign countries, with or without scholarships. In actual fact, in view of the cost of travel, political changes in the countries of the East and increasingly severe selection procedures for the award of national or foreign scholarships, the number of students is certainly not as high as it is thought to be. Between 1970 and the 1980s it had risen from 1,500 to around 5,000. In the years 1988-1990 the net rate of school attendance in public and private education was approximately 70 per cent and the enrolment rate in universities stood at 360 per 100,000 inhabitants. Even taking account of the steady and rapid increase in the population, the overall school attendance rate continues to be very high. However, a trend towards stagnation was noted from 1990 onwards.

214. This expansion in education was accompanied by an increase in the number of teachers. In primary education, their number was 12,688 in the public sector and 6,050 in the private sector. In 1982 there were 44,240 teachers, including 5,000 in the private sector. The considerable difficulties encountered in maintaining the level of teacher-training can easily be imagined. This level has declined and, in addition, despite the decentralization campaign, the uneven distribution of teachers has been instrumental in placing rural areas and remote urban centres at a disadvantage.

215. While incorporating the terms of the Convention in Malagasy positive law, the Constitution of 18 September 1992 reaffirms the right of the child to instruction and education as well as to vocational training. Responsibility for exercise of this right is conferred on the parents and their freedom of choice is respected. The State is duty-bound to organize education that is public, free of charge and accessible to all. Articles 23 and 24 of the Constitution specify that primary education is compulsory for all.

216. The fundamental problems that have to be raised in the best interests of the child, in the exercise of his right to an education organized on the basis of equal opportunity, mainly concern the following issues underscored by article 28 of the Convention:

(a) Access to schooling;

(b) Action to combat dropping out of school;

(c) Maintenance of an appropriate standard at all levels of education.

A. Access to education

217. The spectacular increase in the number of schools, particularly in the primary level, does not necessarily mean that all children have equal access to education. There are many obstacles.

218. A proper allocation of schools in accordance with the school age population has been difficult. In some cases, the fact of making already poor communities responsible for the salary of the schoolmaster and for financial participation in school building has discouraged more than one community, and despite ad hoc assistance by the authorities, the level of teachers has been and remains necessarily unequal. The scattered population, the housing conditions, the ill-considered recruitment and use of individuals who are too young and inadequately trained, and the modest funding available for certain categories of teachers have contributed to school closures, shortcomings in the teaching profession and a virtually general decline in the level of teaching. A badly planned and unevenly taught school programme for very young people is known to jeopardize, sometimes irreparably, the chances of underprivileged pupils. This is the situation of pupils in rural areas, and in poor overpopulated suburban areas or in the remote regions.

B. Action to combat dropping out of school

219. There are several reasons why children drop out of school, and they concern primarily the children themselves. The youngest have to make a physical effort, one which tends to be underestimated, in order to go to and from school. For them, the problems of health, nutrition and virtually of survival have priority over primary education, which may be of poor quality for the reasons we have adduced.

220. Children are the responsibility of the family, which itself cannot always afford to contribute to the cost of the child's needs, operating the school cooperative and creating and maintaining within the home an environment favourable to the intellectual fulfilment of the child.

221. The child's chances of cultural development are greater in cases where the authorities and the NGOs are able to provide the necessary additional help. This is not the case in the underprivileged areas, particularly when the child has become sufficiently strong and has to leave school to help his family materially.

222. The use of a language of instruction is a sizeable obstacle. The introduction of Malagasy as the vehicle of instruction in primary education and the first cycle of secondary education in place of French occurred at a time when the education system, moving in the direction of an ill-considered expansion, experienced a decline in standards. In itself, the use of the mother tongue during childhood and adolescence cannot be considered as a mistake. Indeed, the child is not cut off from his cultural roots and thus has access to basic knowledge that is crucial for his complete fulfilment, with greater ease, self-confidence and intellectual balance. There is no divergence between school and daily life in the family environment.

223. The difficulties arise, in substance:

(a) From the uneven training of the teachers; some have had access to adequate teacher-training and are motivated, while others, because of hasty recruitment and inadequate training, are unprepared for a fruitful dialogue with their pupils;

(b) This dialogue is especially complex because in some regions the national language which is traditional or considered to be such exists alongside equally traditional dialects in current use;

(c) A further difficulty lies in the inability of some average pupils to learn and master a language other than their mother tongue, a situation which leads them to drop out of school;

(d) The main difficulty lies in the insufficiently studied change-over from concepts acquired in the mother tongue to a higher level of education in a linguistic vehicle that is totally different in terms of syntax, concepts introduced and the general conception of tuition. This difficulty has been so great that students approaching the final phase of their advanced studies still do not have a good command of French.

224. It should, however, be stressed that pupils who have become students in technical and scientific subjects have overcome the difficulty much more successfully than literature or law students.

225. The problem is complex and hinges on a choice which will have to be made at a high level. It therefore seems worthwhile to reproduce below part of the recommendations of a symposium held in 1992 on the initiative of the Malagasy Academy, with the patronage of the education authorities. The subject of the symposium was "Language as a tool for development":

"...

1. Absolute need for a review of the methods of teaching both Malagasy and French;

2. Need for foreign technical establishments to have a knowledge of the Malagasy language for more efficient action;

3. Need for private establishments of all kinds to teach Malagasy;

4. Training of teachers who are bilingual in Malagasy and French in order to remove rivalry;

5. Cooperation of specialists in each discipline and linguists to make Malagasy the language for scientific and technical subjects;

6. Widespread publicity of all research programmes into the Malagasy language, so as to put an end to duplication of work;

7. Need for the establishment of an educational research institute independent of the political establishment;

8. Development of flexible facilities for identifying and assisting materially and geographically underprivileged individuals possessing great intellectual potential ...".

C. Maintenance of an appropriate standard at all levels of education

226. On the eve of the probable adoption of a new education policy, it is difficult to raise economic problems which will very certainly be resolved in the near future. However, a policy has been initiated, with the following features:

(a) Priority on expenditure to extend and maintain the quality of primary education. Education is receiving additional assistance from the international community. The new strategy focuses on assistance in teacher-training, in supplying teaching materials and university reform;

(b) In the spirit of the Constitution of September 1992, efforts are being concentrated on a genuine decentralization of educational administration, budgetary autonomy for higher education and more sustained attention to vocational training.

227. The objective of the Republic of Madagascar is to train men and women capable of coping with the real life that awaits them and in the case of the best of them of being directly operational. As far as the best interests of the child are concerned, as many children of school age as possible should receive a high-quality basic education. This effort to achieve quality must prepare the way for equal access to all types of education: not everyone can go to university but everyone entering school must have an opportunity of receiving high-quality instruction, either vocational or at the university level.

D. Statistics

228. Percentage of children attending school:

	Public	Private	Total
Antananarivo	46.82	19.4	66.22
Fianarantsoa	52.78	8.41	61.19
Toamasina	69.08	5.77	74.83
Majunga	56.27	6.59	62.86
Toliary	45.67	7.18	52.85
Antsiranana	66.72	9.42	76.14

Percentage of children not attending school:

Antananarivo	33.78	
Fianarantsoa	38.81	
Toamasina	25.17	Average = 34.4 per cent
Majunga	37.14	
Toliary	47.15	
Antsiranana	23.86	

Drop-out and repeat rates:
Primary cycle: 13 per cent drop-out
35 per cent repeat.

GENERAL EDUCATION

229. Percentage of children attending school in level I, by sex and by Faritany (1990-1991 school year)

Faritany	F	G
Total	49.26%	50.74%
Antananarivo	68.55%	51.54%
Antsirananana	49.59%	50.41%
Fianarantsoa	48.40%	51.60%
Mahajanga	47.71%	52.29%
Toamasina	49.09%	50.91%
Toliara	56.04%	43.96%

Source: Annuaire Statistique 1990-1991.

TECHNICAL EDUCATION

230. Tefisoa I and II
Number of girls and boys
(1990-1991 school year)

Specialities	BG	G
Total	1 790	578
Agro-Craft	83	83
Metalwork	337	27
Woodwork	442	16
Building	64	15
Building and Public Works	280	126
Agro-Industrial	12	0
Embroidery - Dressmaking - Ready made clothes	343	233
Printing	46	17
Plumbing (ISGI)	42	9
Ceramics	16	4
Hotel trade	14	9
Art	20	4
Weaving	35	35
Boat-building	56	0

Source: MIP Annuaire Statistique 1990-1991.

E. Right to rest and leisure

231. Whereas article 28 of the Convention was about education, article 31 points out that a child has the right to rest and leisure.

232. The Convention addresses a problem that is certainly not new but has special meaning in a country where a child is king yet customarily has had only duties towards society, tradition and the family, and only incidentally should he be entitled to rest and leisure:

(a) Rest having to be considered as a necessity for one's health, particularly in the case of disadvantaged children, who are called on without question to make constant efforts to lessen the burden on the family;

(b) Leisure constituting a set of distractions to which the child is entitled, by his very nature and also because leisure has an educational value.

233. In fact, Madagascar has a complex socio-cultural range of traditional games. Old traditions of children's games and songs are still found in the remotest rural areas. Older boys play games that tend to be violent, while older girls' games imitate family life. As they approach maturity, and without giving up games that provide physical exercise (balls made of rags, wrestling for boys, training of oxen, boat races, etc.), children engage in traditional games with riddles, proverbs, etc. helping to develop a knowledge of popular literature (stories, legends, traditional theatre, improvised choir singing).

234. This tradition of games and leisure activities originating in ancient customs still exists. It should not be abandoned for more "modern" leisure activities, but should be integrated with the changes that are a result of the intense traffic passing through Madagascar: toys, imported games, collective performances by artistic groups. Such a symbiosis may be achieved within traditional communities and also through youth associations (churches, the scout movement, extracurricular and post-school activities).

235. Some leisure activities are combined with educational concerns relating to the environment and protection of the nation's natural heritage, and may also be used for civic and moral upbringing. Such educational and leisure activities are developed informally through all kinds of private initiatives or programmes undertaken by motivated educators.

236. However, very definite reservations have to be made about activities considered as leisure that may endanger the child's moral health and harmonious mental development.

(a) In the traditional field: betting on fights between small animals (such as drugged chameleons) or cock fights ending in the death of one of the animals;

(b) In the "modern" field: pin-table football, video films shown without discernment or dances held on official occasions or for popular festivals that unfortunately degenerate into drinking bouts or brawls.

237. In all these fields, the important thing is to inform and educate parents and all persons exercising official or traditional authority, as well as the educators themselves. Needless to say, the problems of information, education and organization of leisure activities vary as between rural, suburban and urban areas.

VI. SPECIAL PROTECTION MEASURES

238. This section reviews special legislative, judicial, administrative or social measures to deal with the particularly vulnerable situations of children who stand in need of protection under the Convention. They may involve emergency situations created by social unrest affecting the whole of the population, among which children are the weakest category. They may also involve children who, because of adverse social factors and influences that seriously jeopardize their physical and moral safety and personality, commit offences and find themselves exposed to a conflict between the protection of society by criminal law, which requires action by the appropriate

institutions, particularly the courts, and the best interests of the child. They may also concern children whose physical integrity, freedom or morals are jeopardized because of their vulnerability and physical weakness: such children may be victims of exploitation or physical or moral violence, which the Convention is specifically intended to combat. Lastly, they may involve children belonging to social groups that are subjected to discrimination, hostility or violence. Not being able to fight effectively the various forms of discrimination practised against them, these groups do not afford adequate protection for their children. Such children are bound, therefore, to be directly concerned by the Convention.

239. Before considering the implementation of the articles of the Convention on categories of children in need of special protection measures, the various situations summarized above have to be placed in the context of Malagasy social life.

240. One essential point, as mentioned earlier, is that Madagascar is in a doubly paradoxical geographical and political region.

241. On the one hand, being far removed from areas of armed conflict and violent socio-political unrest, the country may be regarded as a place of peace and social tranquillity. To be sure, the country has seen the emergence of political and social movements generating violence and threatening the weakest people. It has also witnessed economic disasters that have caused famine, population exoduses and, consequently, an abnormal rate of infant mortality.

242. However, while such situations have had effects on children that must not be underestimated, they have never reached the scale of the armed conflicts occurring in other regions. Furthermore, the problems have not been nationwide but have affected only certain regions. In addition, it should be noted that some of these situations were very short lived, and State action, together with humanitarian assistance from national NGOs or international agencies, quickly remedied them. This was the case, for example, with the popular uprising in 1947, the socio-political unrest in 1971 and 1991, the violent events of 1971 in the south of Madagascar and serious incidents involving a violent conflict between the population of Majunga and Comoran nationals in that region after 1976, as well as the increasing food shortages in the extreme south.

243. Owing to population pressures in Madagascar, the increasing scale of population movements and a temporarily poor economic situation, these various events, although of relatively limited scope, necessarily affected children. While the provisions of the Convention appear in some cases to relate to areas of armed conflict or violent disturbances covering a broad geographical area, they can nevertheless serve as a reference for the Malagasy authorities and the institutions concerned with the protection of children and can be applied despite the differing contexts. A refugee child may be treated as a child deprived of a family because of movements of populations fleeing insecurity and poverty.

244. On the other hand, Madagascar is on the major international routes and, with the continued rise in traffic between continents and neighbouring

countries, it is becoming a crossroads and a haven. A glance at the map of the south-western part of the Indian Ocean shows that Madagascar is surrounded, beyond the Mozambique channel, by South Africa and the sensitive eastern and north-eastern regions of Africa.

245. Intercontinental shipping is heavy because the larger vessels cannot pass through the Suez Canal. Madagascar's policy of economic openness and promotion of tourism has its beneficial aspects, but also its inevitable social consequences: trafficking, smuggling, weak immigration controls, easy access to the small ports and outer harbours of the island continent of Madagascar and increasing communications with neighbouring islands (the French territories of La Réunion and Mayotte, Mauritius, the Comoros and the Seychelles). Mention should also be made of the heavier traffic between South-East Asia, Madagascar, East Africa and Europe.

246. The problem is obviously not one of isolationism but of knowing how to take account of this situation - which, without appropriate measures, might threaten the social order, health or even physical safety (sale, trafficking, abduction or exploitation of children).

247. The entry into force of the Convention for the Republic of Madagascar affords the considerable advantage of placing the protection of children within a much broader international framework than was conceivable when the first legislation on child protection was drafted.

A. Children in situations of emergency

1. Refugee children

248. Article 22 of the Convention provides for the protection of children considered as "refugees" within the meaning of humanitarian law.

249. As already explained, such a situation has not yet occurred in Madagascar but might arise in the future. For the time being, three types of legislative, administrative or social measures exist and may respond to the concerns of the Convention.

(a) Administrative protection

250. Any refugee child may be considered as an alien entitled to administrative protection. Such protection may be accorded indirectly to the refugee child under Act No. 62-006 of 6 June 1962 concerning immigration procedures and controls and Decree No. 66-101 of 2 March 1966 implementing the Act. There is, in particular, an Aliens, Refugees and Stateless Persons Office in the Malagasy administration (Ministry of the Interior). Furthermore, when a child is at risk, the Social Assistance Services may be requested to take urgent steps, such as placement in an appropriate centre run by an NGO or hospitalization.

251. The refugee child may be treated as a child of unknown nationality. The Republic of Madagascar has acceded to the International Covenant on Civil and Political Rights, article 24 of which states that "every child shall have, without any discrimination as to race, colour, sex, language, religion,

national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State ... Every child has the right to acquire a nationality".

252. Apart from the administrative protection afforded to stateless persons and refugees (under article 6 of Decree No. 66-101 of 2 March 1966, "refugees are aliens who, for political or other reasons, have been admitted as such into the territory of the Republic of Madagascar by decision of the Ministry of the Interior"; article 30 of the same decree states that: "the Refugees and Stateless Persons Office shall afford legal and administrative protection for this category of alien and, in liaison with the various ministerial departments concerned, provide for the implementation of international conventions, agreements or arrangements concerning stateless persons and refugees"), the best possible protection for a refugee child is to grant him Malagasy nationality.

253. However, Malagasy legislation in this field is restrictive, since the Nationality Code is based essentially on nationality by filiation. The Ordinance of 22 July 1960 setting out the Nationality Code (articles 9 to 11) is very clear in this respect. Most children of unknown nationality must therefore be considered as stateless persons or go through the lengthy procedure of naturalization, which is ill-suited to their situation.

254. However, given the ease of travel between neighbouring islands in the south-western part of the Indian Ocean, children treated as refugees may in fact be of Malagasy origin. For such cases, Malagasy law provides that any child of unknown parentage may benefit from various presumptions drawn in particular from his name, physical characteristics, social habits or knowledge of the language. These elements may indicate Malagasy origin and consequently enable the child to be recognized as a Malagasy national. Clearly, however, this possibility is limited to the categories of children coming from neighbouring countries.

255. A refugee child may be treated as a child deprived of a family. In this case, Ordinance No. 62-038 of 19 September 1962 may be invoked, since it provides for judicial action enabling protection measures to be ordered by the competent judge, who can arrange for such measures in respect of a child whose "security, morals, health or education are in jeopardy".

256. If danger is close, urgent action is needed. This broad interpretation of the Ordinance of 19 September 1962, on child protection, could be extended to a refugee child.

(b) Children in armed conflicts

257. Article 38 of the Convention is hardly applicable to Madagascar. However, no legal provision on national service or a state of national necessity requires children to take a direct part in hostilities. Malagasy law contains no provision for children under 18 years of age to be enlisted for service in situations of armed conflict.

258. While the rules of humanitarian law either through conventions or through national legislation, are not really applicable as a whole in Madagascar, the legal arsenal constituted by the application of the International Covenant on Civil and Political Rights and the provisions of criminal law protecting children - in particular, morally or physically abandoned children and children whose physical integrity, safety or health is in jeopardy (Ordinance of 19 September 1962, on child protection) - is enough to protect the children of the civilian population in armed conflicts.

259. As to physical and psychological recovery and social reintegration, the legislation on child protection provides for measures of educational assistance to be taken by the judicial authorities. These authorities are vested with the power to apply judicial procedures to ensure that such measures of educational assistance serve the purpose of recovery and reintegration. Thus, for example, a judge dealing with matters concerning educational assistance can order public inquiries, medical examinations and tests before or as follow-up to any educational assistance measures he decides upon. There is, in addition, increasing cooperation between the judicial authorities and the paediatric services of the medical centres.

260. Regrettably, however, the widely scattered courts, the shortage of staff and of special agencies for social protection and the large gaps in the relevant legislation, which has not allowed for the rapid changes in Malagasy social structures and the transformations of international life, are tending to diminish awareness of the new problems that continually arise in child protection at the present time. This situation compels the authorities concerned to extend the legislative provisions further than anticipated, to rely on non-governmental organizations unprepared for new tasks far removed from charitable work as such, and to cope with unforeseen situations often with pitiful resources.

B. Children in conflict with the law

261. Article 40 of the Convention addresses a problem that is different from the ones dealt with thus far: the child must enjoy protection in regard to the exercise of his rights and against any attacks he might suffer on his body or mind because of his physical inferiority. However, it is also possible for a child to commit offences under criminal law that cause bodily harm or material damage to others and require action to be taken by society through judicial proceedings.

262. Malagasy law, in both letter and spirit, has endeavoured to strike a balance between the necessary protection of society and the best interests of the child, who because he is young, is entitled to treatment appropriate to his status as a minor and to safeguards of his personality and dignity.

263. The fundamental legislation in this field comprises:

(a) The Malagasy Code of Criminal Procedure, of 20 September 1962, which provides for the application of the general principles of law such as non-retroactivity of criminal, the presumption of innocence, safeguards concerning the right to a defence, the right to two-tier court jurisdiction and respect of privacy. These general rules are applicable to both adults and

children. In addition, as already mentioned, the Republic of Madagascar has acceded to the International Covenant on Civil and Political Rights, which contains in articles 9 and 10 specific provisions on separate treatment, appropriate to their status and age, for young people placed in pre-trial detention (and therefore not yet sentenced) and for convicted juvenile delinquents;

(b) Ordinance No. 62-038 of 19 September 1962, on child protection, lays down specific procedures on the prosecution of children and on minority as an attenuating circumstance, which is automatically applicable and systematically reduces systematically the penalties imposed by the courts when they find a child criminally liable and pass sentence on him.

1. Administration of juvenile justice

264. Ordinance No. 62-038 of 19 September 1962, on child protection, introduced juvenile magistrates and special criminal courts for juvenile delinquents. It should, however, be pointed out that because of lack of staff, the functions of juvenile courts and of judges responsible for educational assistance are, in fact, performed by the ordinary courts. The same is true of the criminal courts for children but the provisions concerning the appointment of juvenile magistrates and members of the Court of Appeal responsible for matters concerning child protection are fully applied in the courts where staffing permits. Similarly, when there are several examining magistrates, one of them specializes in juvenile cases.

265. The Code of Criminal Procedure and Ordinance No. 62-038 of 19 September 1962 together establish procedures which may be summarized as follows. If an offence is committed, the case may be brought before a juvenile magistrate by the public prosecutor or by the injured person. Alternatively, the juvenile magistrate may himself decide to look into a case after receiving information from persons appointed to work with him, such as probation officers, social workers or NGO representatives. The juvenile magistrate examines the case in accordance with the rules of ordinary law and takes the steps required by the Code of Criminal Procedure, but can also order special hearings (parents, school headmaster, social workers), public inquiries or expert medical examinations. Malagasy law takes into consideration the personality and age of the minor, attaching great importance to methods of investigating endogenous factors that come within the fields of psychiatry, psychology or the application of experimental psychology to education. This facilitates the minor's social reintegration and helps to identify the root causes of his inability to perform a constructive role in society.

266. There is, however, a particular feature of Malagasy law that requires explanation. Article 40, paragraph 2 (b) (ii), of the Convention calls for a minor to be provided with appropriate legal assistance - in other words, the presence of defence counsel. The Ordinance of 19 September 1962 states, in article 11, that the procedure before the juvenile magistrate shall be confidential and even stipulates that "the provisions of the Code of Criminal Procedure concerning the right to a defence are not applicable thereto".

267. These provisions are open to discussion, since the outcome of he procedure before the juvenile magistrate may be a criminal penalty imposed by the juvenile court to which the case is referred, release of the minor, a reprimand, or probation; but it is also possible to take the view that the legislature wanted to place full confidence in the juvenile magistrate and, in any event, this procedure covers only minor offences. For criminal offences, the examining magistrate has jurisdiction. He may be requested to examine a case by the public prosecutor and acts in accordance with the rules of the Code of Criminal Procedure. The presence of defence counsel in such proceedings is obligatory.

268. The Malagasy Code of Criminal Procedure provides, even in criminal cases, for a "summary information" procedure. This is in fact a procedure of examination but is directly entrusted to the magistrates of the Prosecutions Office. It is thus an expedited procedure not requiring action by the examining magistrate under ordinary law. Cases handled under this procedure are referred directly to the criminal court. With a view to fully safeguarding a minor's right to a defence, the Malagasy legislature has prohibited the summary information procedure from being applied to minors.

269. The procedure before the examining magistrate is, in particular, governed by the general principle requiring the examining magistrate to act both for the prosecution and for the defence.

270. The juvenile court hears all cases involving offences committed by minors under 18 years of age. It is important to note that, under the Malagasy Penal Code, offences are punishable by imprisonment for a period of 1 to 10 years. To protect the child's dignity and personality, hearings take place in camera but always in the presence of defence counsel and with the safeguards of the right to a defence.

271. Penalties or other measures concerning minors, taken either by the juvenile court for minor offences or by a criminal court hearing criminal cases involving juveniles, are governed by rules which observe the provisions of articles 37 and 40 of the Convention.

2. Treatment of children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings

272. This is a particularly sensitive area because the competent authorities (judicial, administrative and social) are forced to try and reconcile three situations.

273. In the first place, although the competent ministries, and the Ministry of Justice (Department of Prison Administration and Supervised Education) have made considerable efforts, the prison population far exceeds prison capacity. As far as possible, the judicial authorities are taking this fact into consideration and are limiting the measures that they adopt to educational assistance or placement on probation or in the care of a trustworthy person. However, in the most serious cases (minors from 16 to 18 years of age who are not fully responsible) the court may deem that pre-trial custody or a custodial penalty is necessary. The conditions of the detainees are such that

the juveniles placed in detention suffer much more than do the adults because of the overcrowding, and the brutality that inevitably escapes the notice of the warders who are already few in number and because it is extremely difficult to make sure that the juveniles' section is really separated from the adults' section, and finally, because of the moral degradation of still redeemable juveniles who have to live together with delinquents whose recovery is much more difficult.

274. Second, the pre-trial investigation of some juveniles takes a long time, because of the concern to ensure that the investigation witnesses for the prosecution and for the defence are examined under the best possible conditions, and the rights of defence and the proper conduct of social or medical investigations are guaranteed. This, in fact, constitutes a disadvantage, for a juvenile who is kept in custody all the longer.

275. Third, in Madagascar, there is only one rehabilitation centre, namely, the Anjanamasina Centre for juvenile delinquents, and it has limited accommodation for about 100 juveniles. It is about 30 kilometres from Antananarivo and comes under the Ministry of Justice. The Centre needs major renovation. However, some projects are now being studied with a view to setting up centres. It is not right to have only one for the whole country. Delinquent or maladjusted juveniles, whom the judicial authorities want to avoid putting in prison and whom the Anjanamasina Centre cannot accommodate for lack of space, are placed with non-governmental organizations. It was mentioned earlier that the non-governmental organizations are not specialized, and their moral obligation to take in delinquent or maladjusted juveniles constitutes a major handicap for reception centres that do wish to shelter unfortunate or physically abandoned children and find themselves compelled to cope with overcrowding that is an obstacle to any real social reintegration.

3. Sentencing of juveniles

276. There is one general rule under articles 6, 35 and 43 of the Ordinance of 19 September 1962. A juvenile under 13 years of age who is taken in charge may only be given a reprimand and, if he has committed a crime, only educational measures can be taken.

277. In the case of a minor offence, if the juvenile is from 13 to 18 years of age, a simple penalty of a fine is imposed.

278. In the case of an offence, the juvenile court first deliberates on the question of criminal responsibility, if the juvenile is from 13 to 16 years of age. If it is decided that he is criminally responsible, the court applies the rule that the child's minority is an extenuating factor and the penalty may not be greater than a half of the one to which he would have been sentenced if he had been of full age when the offence was committed. But if the court finds that the juvenile is not of the age of criminal responsibility, it orders supervised education on placement in a rehabilitation centre for a specific period.

279. If a juvenile from 16 to 18 years of age has committed an offence, the same provisions apply as in the case of a juvenile from 13 to 16 years of age.

However, in the most serious cases, the juvenile court has the authority to reject age as an extenuating circumstance, in a special, substantiated decision.

280. In the case of a crime, similar provisions are also laid down:

(a) If the accused is over 13 and under 16 years of age and if it is found that he cannot be held criminally responsible, educational measures are ordered;

(b) If the criminal court decides that a juvenile from 13 to 16 years of age is criminally responsible, age is held to be an extenuating circumstance. This has, inter alia, the effect of prohibiting the penalty of death or hard labour for life and of considerably reducing the penalties that should normally be imposed on an adult;

(c) These provisions are also valid for juveniles aged 16 to 18. Nevertheless, the criminal court has the authority to reject age as an extenuating circumstance. However, even in the latter case, the death penalty for juveniles under 18 years of age is strictly forbidden.

281. It can thus be seen that Malagasy legislation ensures protection of the society, yet gives a really delinquent child the maximum opportunity to be reintegrated into the society, avoids, as far as possible, action of the courts and demonstrates a preference for educational measures and shorter custodial sentences.

4. Physical and psychological recovery and social reintegration

282. Reference has already been made to welfare protection and supervised educational assistance for children in physical or moral danger. But when a child is in a situation of conflict with the law, the problems posed by his recovery and reintegration are more complex.

283. On the one hand, the reaction of the society is unfavourable. It reflects the popular feeling that delinquent children are a threat to society, which is already experiencing insecurity. On the other hand, the recovery and reintegration of young people who have been in conflict with the law call for action by specialized persons, by appropriate agencies and by a larger number of rehabilitation centres.

284. In Madagascar, for basically material and financial reasons, an infrastructure that includes the above-mentioned components is only at an embryonic stage. The country has one single rehabilitation centre for about 100 juveniles, there are not enough magistrates and they must therefore be versatile, welfare institutions are inadequate or else non-existent, and the non-governmental organizations are not specialized and are naturally geared to working with normal children. Nevertheless, the few educators and experts (social workers, paediatricians, psychologists) work quietly with exemplary devotion and with inadequate, not to say pitiful, means.

285. This particular aspect of the protection of children, their dignity and personality should be attended to urgently, at a time when poverty, insecurity and the break-up of families are producing reactions of distrust, indifference or rejection to juveniles who have broken the law.

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration

286. Under article 39 of the Convention, States parties must promote physical and psychological recovery and social reintegration of a child victim of neglect, exploitation or abuse; torture or cruel, inhuman or degrading treatment or punishment and the article goes on to add "armed conflicts".

287. It was explained earlier that the concept of armed conflict did not apply to any great extent in Madagascar but that such a situation could occur in an unusual period of political or social unrest. There are no special regulations or particular measures for protecting children, in such circumstances. Nevertheless, it should be recalled that all the provisions for the protection of adults are necessarily applicable to children and that, furthermore, Ordinance No. 62-038 of 19 September 1962, on the protection of children, stipulates that children must be provided with preferential protection by virtue of their right to "the fullest possible material and moral safety". Moreover, in the event of break-up of the family, the State moves in and arranges suitable educational measures.

1. Economic exploitation, including child labour

288. Article 32 of the Convention protects a child from the obligation to perform any work that is likely to be hazardous or interfere with the child's education, or to be harmful to his health or physical, mental, spiritual, moral or social development. The provisions of article 32 refer to the legislative and administrative measures for the protection of children against all forms of personal danger when they are compelled to work.

289. In Madagascar, as in a number of developing countries, the best interests of the child are in constant conflict with the interests of the family group, which, as a consequence of impoverishment and the absence of assistance to the family for the schooling and vocational training of the young is tending increasingly to think that the child should also participate in the survival of the group. The child is no longer the "child king" but a person who is a burden and should contribute to his own survival. Fortunately, this situation is not general, but it prevails in the poor suburban areas and in the rural areas, where farming methods call for an abundant supply of labour.

290. If the working conditions of the child are examined from the sociological and legal standpoint, it will be seen that a distinction needs to be made between informal work, which is difficult to determine and define, and formal work, which is subject to legal regulations and supervisory measures.

(a) Informal work

291. In this area, a further distinction needs to be drawn:

(a) A child may be called on to work within the family. This work may be considered normal if it is done to help and to play a natural part in the life of the family. On the other hand, if, despite his frailty and his age, a child is obliged to do work that is hazardous to his health or prevents him from attending school, he may be considered a child in physical or moral

danger, and this could justify action either by the assistance or social welfare services, or even in the most serious cases, action by the judge responsible for supervised education;

(b) A child may be sent out by his family as a worker who can bring in a wage, but in most cases such work is really a disguised form of menial labour imposed upon children who are sometimes very young. The danger of jeopardising the child's education and of injuring his health and hindering his moral and spiritual development is then very great. In some families the child may be considered as a taiza, that is, a child of the family who performs a few services either for a pitiful sum that goes to the real family or for his schooling. When placed in foster families, a child may be treated like a real little servant and he will eventually run away to join the Quat'mis, that is, children who have been abandoned or left to themselves.

292. This informal work would need social welfare services with a network of social workers coming under the non-governmental organizations or the decentralized local authorities. But even if the abuses were to be discovered, as explained above, the infrastructure itself is not enough to cope with the problem. One possible solution might be to provide the family with welfare assistance. In the immediate future, the State has neither the resources to provide this to a sufficient extent, nor the means to keep a check on whether it would be used in the best interests of the child.

(b) Protected work

293. Malagasy welfare legislation protects children and forbids the employment of children before the age of 14, even as apprentices, except for well-founded reasons. It is forbidden to employ children under 18 years of age to do work that overtaxes their strength and is a source of danger to their health or morals, or work that is of an immoral character and contrary to the accepted standards of good behaviour, or work in public places for the consumption of alcoholic drinks, or as stevedores or stokers on board ships, or dangerous or unhealthy work.

294. On the other hand, legislative and administrative provisions have been adopted to facilitate apprenticeship contracts for juveniles over 14 years of age.

295. Protected work is unfortunately a limited field, in view of the shortage of national welfare personnel and the difficulties in determining the exact responsibilities of the Labour Inspection Services as compared with those of the social welfare services (welfare assistance, legal protection of the child). Besides, some unorganized social groups receive no kind of official coverage and are very inadequately protected by the few non-governmental organizations: children working independently at small jobs (for example, as porters, car-park attendants, or as mere beggars) or children doing very hard work in the rural areas. They are employed to do adult jobs and their physical and mental development is prematurely stunted, since they receive no primary education. They are not registered with the offices of the civil registry.

2. Drug abuse

296. Young people in Madagascar are increasingly in danger from illicit drug trafficking, a problem that has already been mentioned in respect of Madagascar's geographical situation.

297. Ordinance No. 60-073 of 28 July 1960 forbids the growing, preparation, possession and consumption of rongony (Indian hemp) and this essentially prohibitory legislation helps to some extent to prevent juveniles from consuming rongony, which is nothing but a drug.

298. However, it should be noted that:

(a) This legislation does not punish acts which are likely to encourage minors to consume rongony nor does it affect the adults who obtain rongony for them and provide places to smoke it;

(b) In Malagasy tradition rongony is considered as a stimulant. It is commonly used and is even taken as a medicine. It is widely known for example that rongony, if taken within the first 15 days of a viral hepatitis infection, is almost certain to effect a cure. Other liver diseases are also traditionally treated with rongony. It artificially appeases hunger and people know that it is not a hard drug;

(c) Other drugs, particularly the hard drugs, are circulating among the young people and should be prohibited, with penalties for the suppliers.

299. The fight against the use of rongony as a stimulant by young people should continue, but much broader legislation on illicit trafficking in other narcotics and more dangerous substances should be adopted. There is, of course, no shortage of international conventions to which Madagascar has acceded. Besides, some earlier internal provisions are still in force but they must be codified, set in order and brought up to date.

300. It should also be recalled that Madagascar has acceded to the Geneva Convention of 26 June 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs and the 1961 Geneva Single Convention on Narcotic Drugs and to the Vienna Convention of 21 February 1971 on Psychotropic Substances.

301. The Decree of 12 November 1916, which is still in effect, regulates imports, trading in, possession and use of poisonous substances, especially opium, morphine and cocaine. Penalties have been established for persons who use or facilitate the use of narcotics by obtaining them or even making premises available. A Decree of 20 April 1919 classifies these substances and punishes illicit sale in violation of the rules for manufacturers, pharmacists, doctors and veterinary surgeons. There is also an order of 22 June 1908 prohibiting opium dens. These provisions, meant for adults, do not expressly relate to juveniles, but who nevertheless are obviously fully protected by them.

3. Sexual exploitation and sexual abuse

302. Article 34 of the Convention calls on the States parties to protect the child from all forms of sexual exploitation and sexual abuse. The measures taken should be national, bilateral or multilateral.

303. The Malagasy lawmakers do not appear to have been particularly concerned about taking international measures. However, with reference to article 36 of the Convention, the police authorities and in particular those responsible for border control (essentially the ports, open roadsteads, the airports, easily accessible beaches) are giving increasing attention to monitoring anything which might hide trafficking in children either for the purposes of sexual exploitation or for clandestine work which juveniles are forbidden to do.

304. There are many difficulties involved in such monitoring. In the specific case of exploitation for prostitution and other illegal sexual practices, the acts involved are sometimes carried out with collusion between the victims and the organizers themselves. Again, there may be a fraudulent promise of marriage, there may be adoptions used as a screen for trafficking in children, or children may be abducted under the cloak of organized trips or the search for work abroad, by agents who are really engaged in trafficking. These acts are relatively recent and are very likely caused by poverty and easy sea and air travel.

305. As to national protection measures, no criminal law prohibits prostitution, and the protection of juveniles, particularly when they have passed the age of puberty, consists above all of measures to combat soliciting and of medical protection against sexually transmitted diseases. But for many years Malagasy law has been fighting organized vice, the exploitation of juveniles and any activities which are harmful to the morals and safety of juveniles. For example, the Penal Code imposes severe penalties for acts of indecent assault, which have the purpose or effect of inciting, encouraging or facilitating the vice or the "corruption of young persons".

306. All forms of soliciting are forbidden. An order of 5 May 1939, prohibits brothels and prostitution in rooms kept by cafe owners and proprietors of bars or lodging houses. Procuring is severely punished, particularly if it has been committed in respect of a juvenile and if it has been accompanied by coercion or violence. Special protection is provided for juveniles under 16 years of age. In that case the punishment is for a casual immoral act.

307. Acts of violence, indecent exposure, indecent acts, the crime of rape or attempted rape, indecent exposure accompanied by violence all constitute offences which are very severely punished (punishments range from imprisonment to hard labour) if they are committed against juveniles.

308. The production of pornographic shows featuring children is also a statutory offence (Penal Code, arts. 330 to 335).

309. None of these provisions of the Malagasy Penal Code is new. But it must be recognized that they are not very effective for various reasons, if only two:

(a) The precociousness of juveniles and the permissiveness that is part of customs, admittedly reprehensible, but traditionally allowed in some regions;

(c) The custom whereby the family group punishes acts of indecent assault, as long as there has been no serious bodily harm and the person committing the assault compensates the victim and the parents according to tradition.

D. Situation with regard to minorities

310. Article 30 of the Convention provides for the protection of children who belong to an ethnic, religious or linguistic minority.

311. Malagasy culture is generally opposed to any idea of discrimination. The preamble to the Constitution of 18 September 1992 proclaims that the essential conditions for the harmonious growth and development of the Malagasy people include "the fight against injustice, inequality and discrimination in all its forms".

312. Act No. 82-013 of 11 June 1982 stipulates imprisonment and a fine for any civil servant, government agent or official who "on account of the origin, colour, sex, family circumstances of a person or his membership or non-membership, real or alleged, of a particular ethnic group, nation, race or religion has knowingly refused him the benefit of any right which he could demand". This provision is applicable both to adults and to children.

313. It has been stated repeatedly, in this report, that the existence of the provisions of international or national law are not sufficiently convincing proof of the effective application of these provisions. Effective application of the law depends on many factors which have been explained above. It is to be hoped, however, that the strengthening of the rights of the child by fundamental laws and international conventions will make for a better knowledge of these rights and for real progress, if practical measures are taken to protect them.

314. This hope is founded on two basic legal factors:

(a) The preamble of the new Malagasy Constitution of 18 September 1992 lists the essential conditions for the development and growth of the Malagasy personality and includes in these conditions respect for and protection of the fundamental freedoms which are specifically enumerated in the Convention on the Rights of the Child. It is common knowledge that a debate has been going on for a long time between those who support and those who reject the legal import of a constitutional preamble. However, article 13 of Ordinance No. 62-041 of 19 September 1962, on the general provisions of law, clearly specifies that "the general principles contained in the preamble to the Constitution of the Malagasy Republic are binding on the courts";

(b) The preamble to the Constitution of 18 September 1992 confirms that the Malagasy people, in other words the lawmakers in the highest sense of the

word, "by their endorsement of the International Bill of Human Rights, the African Charter on Human and Peoples' Rights", consider them to be "an integral part" of Malagasy positive law.

315. These details, which may seem conventional and even academic, do in fact have a fundamental bearing on the practical application of the provisions of the Convention on the Rights of the Child. Not only has the legality of important rules elevated to the level of general principles of law and contained in the preamble to the Constitution been confirmed, but the Constitution of 18 September 1992 itself rightly includes in Malagasy positive law the binding provisions of the above-mentioned international conventions. This great stride forward does not in any way preclude incorporating provisions of the conventions in Malagasy positive law, for the purposes of clarification and better information, but above all, it places an obligation upon the public authorities to turn their attention, without delay, to internal provisions for effective enforcement of the articles of the Convention on the Rights of the Child that are mandatory.

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